UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1212
16 April 1993

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1212th MEETING

Held at Headquarters, New York, on Thursday, 25 March 1993, at 10 a.m.

Chairman: Mr. ANDO

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1212/Add.1.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.15 a.m.

1. Mr. ABARRY (Niger) said that the Committee's questions had, in the main, been prompted by the lack of necessary information in the initial report and he hoped that any questions which he was unable to answer would be answered in his country's subsequent report.

2. Many problems experienced in the Niger relating to the exercise of civil and political rights were due to the upheavals caused by the dismantling of the old order and the institution of a new order committed to the restoration of democracy and an atmosphere more conducive to the protection of those rights. Already, the human rights situation in the Niger was better than ever before.

3. In particular, there were no political prisoners in the country and the flourishing of new political parties was not, as some members appeared to believe, evidence of antagonisms within the population, so much as an expression of their mutually complementary aspirations towards pluralism. The country was currently engaged in the second round of presidential elections, in which two major political groups had emerged, divided neither on ethnic nor on tribal lines. All ethnic groups were represented in the different politiçal parties, although, inevitably, their leaders derived more support from their native regions. The Niger had eight major ethnic groups and was fortunate that those groups were closely interrelated. Consequently, issues which might otherwise have erupted in violence were generally settled among them in a lighthearted and harmless manner. Furthermore, over 90 per cent of the population of the Niger was Muslim and such Islamic principles as the concept of Ummah and the precept of tolerance had led to constantly improved relations between the various ethnic groups.

4. In that context, he explained that the Tuareg rebellion had complex historical roots and could be dated to the death in 1987 of the former President Seyni Kountché and the accession to power of General Ali Saïbou who had proclaimed a policy of relaxation of ethnic tension, issuing a general amnesty and visiting neighbouring countries with large Niger populations, primarily Algeria and Libya. Those visits had led to the return of many former residents who had been forced to flee the country in the 1980s because of the drought. They were primarily livestock farmers from the north of the country who, in the new economic conditions of the country, had been unable to resume their previous economic activities. In addition, the north of the country had been in a state of considerable upheaval caused by the conflict between two neighbouring countries, into which some of those people who had returned to the Niger in 1987 had been drawn. The returnees had brought arms and ammunition with them and received wide support from the population and the international community. In addition, many of them had come from countries such as Algeria and Libya and brought a new vision of the world, estranged from the traditional values still upheld by the elders remaining in the country. In consequence, new administrative leaders had emerged who were out of touch with traditional values, and misunderstandings and friction had arisen, further exacerbating the economic crisis already affecting the country. All those factors had combined to bring about the acts of insurrection in the north of the country, which, in turn, had been exploited by certain politicians to further their own ambitions.

(Mr. Abarry, Niger)

5. He noted that the population of the north of the country was not exclusively Tuareg but also included one large, Hausa-speaking, sedentary group. In addition, the Tuaregs themselves were not a homogenous group, but comprised some 10 separate tribes. The existence of the practice of slavery, mentioned by one member, was difficult to establish because of the difficult conditions in that part of the country and the serious crisis experienced by the Tuaregs. Furthermore, there were Tuareg populations in neighbouring countries as well and since the Niger's army was weak both in numbers and in equipment it was unable to ensure control over the entire country, with an area of 1.67 million square kilometres, and, in particular, to control transboundary movements of Tuareg groups. Efforts by the Government to reach a compromise settlement with the Tuaregs were seriously hampered by the existence of so many different groups.

6. He was pleased to inform members, however, that five days previously, the Niger Government had declared a cease-fire with the Front de Libération de L'Aïr et de l'Azaouad, effective from midnight on 20 March 1993, which had been negotiated by Government representatives and French mediators. In addition, on 16 March the Front had agreed to a 15-day cease-fire at the request of Algeria, which was similarly committed to finding a solution to the conflict. His Government had released several rebel prisoners, but regretted that it had little information about hostages in rebel hands. The condition of those hostages was a cause of serious concern: while the requirements of the Niger authorities were very clear, the opposing side appeared unable to agree on its own demands; an agreement made one day by one group could be rescinded the next by another group, since it had not been present when the original agreement was reached.

7. Turning to the question of the possibilities accorded to ethnic minorities to give democratic expression to their aspirations for the country's future, he said that popular participation in the recent election in the north had been as low as 8 per cent, as compared to 31 per cent country-wide. That low turnout was due, on the one hand, to the popular fear caused by previous incidents, when political meetings had been disrupted by unidentified elements from the north and from neighbouring countries, who had attacked political leaders and members of the public. To address the problem of minorities, the Government had established a new Ministry of State for National Reconciliation with a view to entrusting problems of national unity and the participation of minority populations in public affairs to a single political structure.

8. In response to the question concerning extrajudicial executions, he said that, following a conference on the events in Tchin-Tabaraden in May 1990, appropriate measures had been taken against the highest echelons of the army and public services who had been directly or indirectly responsible. Those very extensive measures had still been insufficient to satisfy certain extremists, however, who, for their own part, were unwilling to make any concessions to the authorities. In addition, other excesses committed by the army had ben investigated and the culprits brought to justice. The Government had joined all the various organizations involved in the defence of human rights in calling for a settlement of the problem of arbitrary arrests and for the freeing of all those held without charge. Those efforts had led to the release of all such detainees except for some 60 persons, to whom particularly strong suspicion

(Mr. Abarry, Niger)

attached. Their cases had been referred to the judicial authorities and the detainees in question were able to receive regular visits from family members, representatives of human rights organizations and journalists.

9. On the subject of the press, he cited legislation enacted in 1969 guaranteeing freedom of the press; the press in the Niger was free and received no State subsidy. Inevitably, it experienced certain financial difficulties which affected the quality of its output, and the role of the print media was limited by illiteracy; broadcast media on the other hand had an important role to play in disseminating knowledge of human rights, and radio clubs and educational television were creating an atmosphere more conducive to awareness of national and international legal instruments in that area.

10. Turning to the question of the status of women and the rights of children, he observed that, since the Niger was a Muslim country, there was a certain interaction between the precepts of Islam and the provisions of positive law. The first women's association had been established in 1976 and, while efforts continued in that direction, tangible results had been meagre. Two new women's organizations had been established since the onset of the democratic process, but because of extreme poverty in the country and a general lack of political will, no significant progress had been achieved. Efforts were being made to draft a new family code and a rural code, although, in that area too, progress had been slow.

11. Social changes of such a fundamental nature often took entire generations to effect and in the Niger, until recently, men in public administration had found it humiliating to have women superiors. In recent years, however, many women had been appointed to positions of high responsibility: there were women ministers, subprefects and mayors and, with the adoption of the new Constitution, the first women had been elected to the National Assembly. The unfortunate incident involving women, to which members had been referred, had been attributable not to the actions of the police, but to certain individuals provoked by the economic crisis and the influence of obscurantist religious ideas. Such acts of violence were strongly condemned by the Government and human rights organizations and the culprits were brought to justice.

12. The low literacy rates in the country were due to its social conditions and the influence of religion. Campaigns to remedy that situation had been mounted by women's associations and non-governmental organizations and considerable progress had also been made in endeavours to eradicate such practices as the marriage of very young girls. All the unacceptable customs highlighted by members were widely condemned by his authorities but difficult to combat because of the covert manner in which they were practised.

13. Turning to questions of a legal nature, he said that, under article 120 of the new Constitution, duly ratified treaties prevailed over domestic law, subject to compliance with those treaties by the other party. The legal position was further elaborated in article 119, which stated that if the Supreme Court was apprised by the President of the Republic, the President of the National Assembly or the Prime Minister that an international commitment contained a clause contrary to the country's Constitution, ratification could

(Mr. Abarry, Niger)

only proceed once the Constitution had been revised. As a result, the provisions of the Covenant and of the Optional Protocol were directly applicable by the courts of the Niger without the need for the adoption of a special law on their implementation. Any violation of those provisions and of domestic juridical norms would be referred to the courts.

14. At the same time, as established by article 98 (c) of the new Constitution, any private individual brought before the courts could raise the question of the constitutionality of a law. Such safeguards notwithstanding, certain social and religious elements in the country continued to maintain that recourse to the courts in both civil and administrative matters was limited. Owing to the force of tradition, the victims of everyday violations, such as traffic accidents, often preferred to seek the comfort of Allah than to obtain legal redress and there was little impetus for the defence of human rights in the Niger.

15. In response to the question concerning the availability of legal aid, he cited a law enacted in 1911, guaranteeing legal aid for any person or any public establishment or private association which lacked the resources to exercise their right to justice either as plaintiff or as defendant. Similarly, legislation enacted in 1967 defended the civil rights of minors brought before the judicial authorities and provided for mandatory counsel to ensure the defence of children in such instances. Such counsel was to be designated by the parents or, in their absence, by the authorities at least eight days prior to the hearing by the presiding officer. In 1990, the Niger had ratified the Convention on the Rights of the Child and some progress had been made in that area. The country's legal provisions did not allow the imprisonment of minors: instead, the rehabilitation of young offenders was carried out at special boarding institutions, usually with the approval of the family, where technical skills were taught.

16. The competence and jurisdiction of the judicial authorities in the Niger was established by legislation enacted in 1992, which stated that justice was rendered in civil, commercial and administrative matters by the Supreme Court, appeal courts, assize courts, courts of first instance, justices of the peace and the labour courts. Hearings were public, unless there were exceptional circumstances, such as threats to public order. Among efforts to ensure the independence of the judiciary, he mentioned the establishment of a special association for magistrates in the Niger, to ensure their independence vis-à-vis the executive branch.

17. Training was provided for police and members of other law enforcement agencies at one college in Niamey; in addition, many members of those agencies received training in other countries, primarily Algeria, Egypt and Senegal, which had greater experience and superior facilities in that area. The curriculum of the police college in Niamey included a course on human rights and fundamental freedoms, which was followed by all members of law enforcement agencies.

18. In response to the question regarding capital punishment, he said that, while capital punishment was still a theoretical possibility in the Niger, it had not been administered for more than 10 years and those persons who had been sentenced to death in that period had received a presidential pardon.

(Mr. Abarry, Niger)

19. The commission on political, economic and other crimes and abuses had been established some 15 months previously under the transitional arrangements, to investigate social abuses, misappropriation of funds and other illegal practices. It was not an emergency tribunal with repressive powers, but carried out its inquiries through regular channels, transmitting the results of its investigations to the High Council of the Republic which, in turn, transmitted them to the appropriate judicial authority. Following the investigations, remedies had been granted to the victims of attested abuses.

20. In response to the question raised about paragraph 19 of the initial report, stating that 15 political parties had been "provisionally" authorized, he explained that those parties had been authorized while the 1989 Constitution, which made no provision for a multi-party system, was still in force. Those parties had therefore been approved pending a new law on political parties and the adoption of a new Constitution. The only restriction on the establishment of political parties and associations was that no political party could be formed on the basis of ethnicity or religious affiliation.

21. In conclusion, he hoped that his replies had shed some light on the areas of concern to members and gave his assurances that his country's next report would be considerably more substantial and would contain the necessary elements for a constructive dialogue with the Committee.

22. Mr. EL-SHAFEI said that the additional information provided by the Niger delegation had been extremely useful to the Committee in understanding the situation in the country. However, he disagreed with the representative from the Niger that Islam, the dominant religion, and its attendant customs prevented people from being aware of, claiming and enjoying their full human rights.

23. Although the delegation had responded to some of the observations made to with respect to articles of the Covenant, certain queries had remained unanswered, in particular his request for information as to whether the new Constitution of 26 December 1992 reflected the new political situation in the country, which now had a multi-party system as opposed to a one-party system under the 1989 Constitution. He hoped that a copy of the new Constitution would be transmitted to the Committee as soon as possible.

24. Satisfactory answers had not been given to the queries concerning discrimination against women. Given the country's current situation, the position of women must be codified in new laws. He hoped that the civil and political rights of the Niger's population would be enhanced by the country's new circumstances and that a place would be found for the Covenant in the new scheme of things.

25. Responsibility for disseminating information on the Covenant and the Optional Protocol should not be left to non-governmental organizations alone; Government officials associated with the implementation of the Covenant must have full information about both the Covenant and the Optional Protocol. He hoped that more information would be disseminated in that regard.

26. Mr. AGUILAR said that he was very concerned about the implementation of the Covenant, particularly such crucial articles as 6, 7, 9 and 14 and those dealing

(Mr. Aguilar)

with fundamental freedoms. Although there were problems with discrimination not only on grounds of sex but also among the different ethnic groups, there was reason for optimism about the changes taking place. It was unfortunate that it would not be possible for a supplementary report, drafted in accordance with the Committee's guidelines, to be submitted during the current session to enable the Committee to engage in a dialogue with another delegation from the Niger: the Committee might be able to help the Niger during its current period of transition to democracy.

27. He was surprised at the low turnout in the recent elections and suggested that it probably had a lot to do with gender discrimination. According to the UNDP Human Development Report, the Niger had one of the lowest rates of school attendance in the world. Since most of the people who got an education were boys and men, most girls and women did not get any education at all. He appealed to the delegation to convey to the Government the great concerns expressed about the situation of women.

28. Mr. HERNDL said that it was extremely difficult at the present stage to assess the human rights situation in the Niger, which was in a phase of transition. There were many signs of positive developments in the country and he hoped that when the Committee took up the second periodic report of the Niger, which was already overdue, that would permit a proper dialogue to be established between the reporting State and the Committee. Despite the additional oral explanations given by the Niger delegation, he still did not have any idea of how the human rights situation was evolving in that country. Questions had been raised about the direct applicability of the Covenant under the legal system of the Niger and it was obviously of the utmost importance that the new Constitution should include a chapter on fundamental rights and freedoms which went well beyond the provisions of the 1989 Constitution.

29. It would be very helpful if the next report provided a complete picture of the situation regarding the structure of the judiciary, the administration of justice, equality for women and the treatment of minorities. It was important to establish a permanent dialogue between the Niger and the Committee. He was sure that the Centre for Human Rights would be able to provide the Government of the Niger with any advice it might need in drafting a comprehensive report on measures taken to implement the Covenant.

30. Mr. FRANCIS said that it was quite clear from the current situation in the country that ensuring respect for human rights in the Niger would be a very daunting task for officials. The dissemination of information about the Covenant was crucial to compliance with the obligations assumed under the Covenant. The emergence of a women's movement was very encouraging and the establishment of a magistrates' association would go a long way towards ensuring the independence of the judiciary. He had very great expectations of the Niger which, despite its current problems, had sent a delegation to engage in a sincere dialogue with the Committee, something which other States parties to the Covenant that did not face the same difficulties had not yet done.

31. Ms. EVATT said that she observed a clear commitment to change in the Niger and welcomed the move to establish a multi-party democracy. She commended, in particular, the attempt to overcome religious and ethnic divisions in the

(Ms. Evatt)

country. However, she was seriously concerned that attempts to implement the rights recognized in articles 6, 7 and 9 of the Covenant might be undermined. It was most important to build the correct structures for democracy, which would need to be considerably strengthened in the future. Such structures would also have to ensure due accountability of the legislative, executive and judicial branches. An independent judiciary was crucial for achieving progress in the exercise of human rights. Considerable work needed to be done to overcome traditional attitudes and prejudices towards women and she welcomed the steps being taken to address some of those problems.

32. It would be helpful if the Niger could establish an agency with clear responsibility for overseeing the implementation of rights and freedoms and for investigating and remedying abuses wherever these were identified within the Government. One solution would be to ensure that both official human rights agencies and non-governmental organizations were encouraged to have access to the media and to disseminate the message of democracy and equality throughout the country.

33. Mr. FODOR said that the Niger's report failed to indicate whether the provisions of the Covenant were duly reflected in the laws of the country. Although the delegation had provided some useful information which gave the Committee a better understanding of the situation in the country and had answered some of the questions put to it, he still did not see how the provisions of the Covenant were being implemented. The process of democratization in the Niger was a commendable development and, given that positive development, it was likely that the human rights situation would also improve gradually. However, that assumption was not sufficient to enable the Committee to carry out its mandate under article 40. He welcomed the news that the Niger would soon submit a second report, which augured well for increased cooperation with the Committee in the future.

34. Mr. WENNERGREN noted that the far-reaching reforms taking place in the Niger were aimed at the firm establishment of democracy and a state of law, which were prerequisites for the exercise of human rights. The fact that the death penalty was no longer implemented in practice was welcome news. More information on the status of women and children would be useful in forthcoming reports. He hoped that the situation of women and children, particularly the education of children, would improve. Since the delegation had not answered his question as to whether the Government intended to establish a commission similar to the crimes and abuses commission established in 1991 by the National Conference, he was recommending that it do so. Such a commission should investigate and prosecute crimes committed during the turbulent transitional period from 1990 to 1993, thereby restoring public confidence in the Government's determination to ensure that justice was done. As Ms. Evatt had noted, it would be a good idea to set up an agency that would receive and investigate public complaints of official abuses and provide appropriate remedies. The information given about human rights training for police and other law enforcement officials was also most useful. He hoped that the Niger would continue to develop such educational and training programmes for public officials.

35. Mr. MAVROMMATIS said that a comprehensive report was a necessary prerequisite for a proper dialogue. Nevertheless, the delegation's replies had shed a great deal of light on the current situation in the Niger. He welcomed the news regarding the changes in the status of women, as well as the background information on the Tuareg rebellion and the recent cease-fire. The next report should go beyond direct references to the Constitution and other laws and provide a picture of the machinery in place for their implementation, along with a discussion of related factors and difficulties. Such information would allow a true dialogue to begin and might also be useful to the country in its democratization process.

36. Mr. PRADO VALLEJO said that the Niger had made efforts to advance in the area of human rights and the newly established democratic institutions had alleviated human rights problems to some extent. He hoped that the country would continue on that course. Although the initial report had not been in accordance with Committee guidelines, the responses to questions had, in effect, provided an outline for the second report, which should be submitted as soon as possible.

37. Despite the efforts made to provide further information, several issues of concern to the Committee remained. First, there had been no investigation of past human rights violations. Action had been taken in some cases, but not all, and no compensation had been provided to victims of past abuses. Discrimination and even violence persisted against women; the Government must introduce effective measures for promoting women's equal rights. The reply about political detainees was unsatisfactory: persons detained without trial should either be released or given a fair trial. Moreover, cases of extrajudicial executions such as those carried out against 40 Tuaregs in 1990, were still not being investigated. The Government should demonstrate its respect for the relevant provisions of the Covenant by taking appropriate steps to remedy that situation. Lastly, it should make every effort to disseminate information about the Covenant at every level of society, so as to allow people to become knowledgeable about their human rights.

38. Mrs. HIGGINS said that, in her opinion, a true dialogue had begun. However, because of a lack of basic information, above all on the new Constitution, the Committee must wait for a response on a variety of issues. The delegation had not answered questions about the regime of exception, the grounds for discrimination and whether the Covenant had been used as a model for constitutional provisions guaranteeing basic rights.

39. The Committee still needed to know what measures were being taken to ensure respect for the 48-hour limit on policy custody and what controls there were on extensions of that period by magistrates. More information was required on the Supreme Court, including its composition, the appointment of members by the Prime Minister, the problem of access to counsel before trial, and the fact that closed sessions could be ordered. Further details were needed on the 1990 extrajudicial executions and on the reasons for the failure to respond to the inquiries of the Special Rapporteur on summary or arbitrary executions. She would be interested to learn more about efforts to address ongoing discrimination against women in the areas of education, property rights and freedom of movement. She would also like to know what was being done to ensure that the security forces obeyed Government orders concerning arrests.

(Mrs. Higgins)

40. She wondered whether it would be a general policy that those found guilty of torture and related offences would be pardoned. Although holding trials in order to establish the facts of such crimes was a positive step, and retribution was not the desired result, the wrong signal could be sent with regard to future compliance with the Covenant if fact-finding alone, and not punishment, was emphasized.

41. There had been a number of encouraging developments such as the establishment of local human rights groups and the adoption of the new Constitution, since the National Conference, but many positive steps towards pluralism had been taken even earlier, such as the relaxation of controls on the press. In addition, it appeared that there had always been a large measure of religious tolerance in the Niger.

42. The new Constitution should be transmitted to the Committee as soon as possible and an early date set for the submission of the second periodic report, which should contain more complete core information and replies to the questions put by Committee members.

43. Ms. CHANET welcomed the news that a cease-fire had been reached with a view to ending the Tuareg rebellion and that many prisoners had been released; she hoped that a lasting peace would follow. Although the delegation had provided a great deal of information, some of its answers, such as those concerning the legal system, arbitrary arrests and the investigation of summary executions, had been too general. With regard to the judiciary, the magistrates' association was a positive step, but more such steps were needed: the status of the judiciary affected the freedom and independence of all citizens. It was also gratifying to hear that some women were occupying high-level posts, but the generally low rate of literacy among women affected the life of the entire country. The questions regarding police custody and guarantees of freedom of expression under article 19 during states of emergency had not been satisfactorily answered.

44. The second periodic report should permit a true dialogue and would allow improvements to be recognized. Indeed, there were many encouraging signs which augured well for the future.

45. Mr. LALLAH said that the quality of dialogue had suffered because the Niger's initial report had been both late and minimal in content. However, he had great hopes for the future because of the country's commitment to change. In the next report, the Committee would need more historical background on the current situation in order to conduct a systematic examination of the exercise of power, the status of the judiciary and the enjoyment of human rights.

46. Mr. POCAR said it was regrettable that most of his questions had been based on sources other than the report submitted and the replies given by the Niger delegation. Those replies had shown the Government's desire to cooperate with the Committee, however, and some concerns had been answered. He associated himself with the concerns expressed by other members, but also with the feelings of optimism prompted by the political changes in the country.

47. Mr. NDIAYE said that the report and the responses from the Niger delegation indicated a clear improvement in the country's human rights situation. When new democratic political institutions were finally in place, further improvements could be expected. He suggested that the second periodic report should be submitted within a year to allow the time for the implementation of the reforms in progress.

48. The CHAIRMAN, speaking in his personal capacity, said that he appreciated the efforts of the Niger delegation to answer the Committee's questions. More information was needed, however, not only about the Constitution and laws but also about their implementation.

49. Mr. ABARRY (Niger) said that he would transmit the Committee's observations to his Government as soon as possible and that they would be reflected in the second periodic report. The deadline for submission of that report should allow sufficient time for new procedures to become operational, in order to avoid submitting a report that had already become out of date.

The meeting rose at 12.25 p.m.

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International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1213
22 April 1993

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1213th MEETING

Held at Headquarters, New York,
on Thursday, 25 March 1993 at 3 p.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of the Dominican Republic

This record is subject to correction.

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the Dominican Republic (CCPR\C\70\Add.3)

1. At the invitation of the Chairman, Mr. Pichardo Olivier and Ms. Abreu de Polanco (Dominican Republic) took places at the Committee table.

2. Ms. ABREU DE POLANCO (Dominican Republic) stated that there had indeed been developments in the human rights situation in her country since the third periodic report had been prepared. For example, while the report stated that Decree No. 417-90 had been adopted for the purpose of regularizing the status of Haitians in the Dominican Republic and repatriating those residing there without documentation, Haitians employed as sugar cane cutters were now furnished with temporary residence papers and permitted to keep those documents in their possession. Changes had also been made in the electoral system with a view to developing a more transparent system. There was no systematic violation of human rights in her country, although, as in all countries, isolated instances might sometimes occur. However, the Dominican Republic sought to uphold those international instruments to which it had acceded.

Constitutional and legal framework within which the Covenant is implemented; state of emergency; non-discrimination; prohibition of forced labour (articles 2, 4, 8 and 26 of the Covenant) (section I of the list of issues)

3. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of the Dominican Republic, namely: (a) the existence of cases, during the period under review, in which the provisions of the Covenant had been directly invoked in the courts or mentioned in court decisions; (b) the extent to which the provisions of article 37, paragraphs 7 and 8, of the Constitution, concerning the possible restriction of rights recognized in the Covenant during states of siege or national emergency, conformed to the provisions of article 4, paragraph 2, of the Covenant; (c) the application of the principle of reciprocity in the treatment of aliens; (d) the restriction of the rights of aliens as compared with the rights enjoyed by Dominican citizens, other than in the exercise of political rights; (e) the status of Haitian workers since the adoption of Decree No. 417-90; (f) measures, if any, taken to prevent abuse of Haitian workers during their transfer to and stay on sugar cane plantations, particularly any investigation of allegations of forced labour or of seizure of identity documents; (g) follow-up actions taken pursuant to the Committee's views on communication No. 193/1985.

4. Ms. ABREU DE POLANCO (Dominican Republic), referring to section I (a), said that if provisions of the Covenant had been directly invoked in national courts, her Government had no knowledge thereof. The country planned to establish a human rights centre both to investigate human rights abuses and to promote awareness of human rights instruments.

(Ms. Abreu de Polanco, Dominican Republic)

5. With regard to section I (b), no state of siege or emergency had been declared in the Dominican Republic since 1965; indeed, constitutional rights were never suspended. With regard to section I (c), the report indicated that there was no law which specifically governed the situation of aliens in the Dominican Republic. However, under articles 11 and 13 of the Civil Code - which were adapted from articles 11 and 13 of the French Civil Code - aliens in the Dominican Republic enjoyed the same civil rights as nationals. That reciprocal recognition of civil rights meant that there was no discrimination against either aliens or nationals within the Dominican Republic. Political rights, however, as mentioned in section I (d), could be exercised only by Dominican citizens.

6. With reference to sections I (e) and (f), she noted that President Aristide had been removed from power subsequent to the adoption of Decree No. 417-90, and that the decree had consequently been rendered ineffective. Currently, all Haitians who travelled to the Dominican Republic to cut sugar cane were provided with temporary residency cards, which they were required to keep in their possession. As to the communication referred to in section I (g), concerning a French national arrested in the Dominican Republic and deported to the United States of America by virtue of the extradition agreement between the Dominican Republic and the United States and Dominican law No. 489, the complainant had been sentenced to 28 years of imprisonment for drug trafficking (by the United States Federal Court in Puerto Rico).

7. Mr. PRADO VALLEJO said that further information on the status of the Covenant in the Dominican Republic would be helpful. For instance, it was unclear whether aliens benefited from the same civil rights as did Dominican nationals; could they invoke the terms of the Covenant in a Dominican court? He also wondered whether domestic law has precedence over international law, or vice-versa. It was also unclear whether paragraph 23 signified that the terms of the Covenant became invalid if that instrument was not incorporated into national law, or whether the Covenant had in fact been incorporated into national law in the Dominican Republic. Nor did the report suggest that the Covenant had been publicized in the Dominican Republic. It would also be interesting to learn whether the report had been published in the Dominican Republic, so that citizens could be informed of their Government's position vis-à-vis the Covenant.

8. The report did not specify what sort of restrictions of rights might go into effect in a state of emergency. Paragraph 35 simply stated that the right to life was ensured. However, that was insufficient: article 4 of the Covenant contained a list of other rights that must not be derogated, such as freedom of religion or freedom of conscience.

9. It would be useful to know how the Dominican Republic reconciled its obligations under international human rights agreements with the concept of reciprocity. The fact that other States failed to respect the Covenant did not mean that the Dominican Republic was not obligated to guarantee those rights reciprocally. The concept of reciprocity set out in paragraph 27 of the report needed clarification.

(Mr. Prado Vallejo)

10. Paragraph 70 of the report stated that, under the Migration Act of 14 April 1939, aliens could be deported if they became dependent on the State within five years after entry, even when no law was broken (para. 6). Yet that Act also stipulated that in cases of deportation, an alien could be detained for up to three months and, if deportation was not possible, could be sentenced to a prison term of from six months to two years (para. (11) (f)). Those provisions contravened article 13 of the Covenant. In the case of the deportation of an alien, a legal trial must take place, and the alien also had the right to appeal his deportation.

11. It would be useful to know whether a citizen of the Dominican Republic, and therefore also an alien, could be exiled without grounds simply by order of the Government. The grounds given in paragraph 66 of the report were inconsistent with the Covenant. Paragraph 74 stated that a person accused of a crime who confessed to that crime could be deported and obliged to sign a memorandum inculpating himself for the crime. Yet one of the basic principles of human rights was that a person could not be forced to confess to a crime; it was incumbent upon the State to prove his guilt.

12. He was aware of the recent laws formulated to benefit Haitians working in the Dominican Republic. Nevertheless, certain facts were disquieting: under Decree No 233-91, workers under the age of 16 and over the age of 60 were summarily expelled from the country, without grounds or trial, whether or not they had been born or had spent their lives in the country. As that not only violated the Covenant but was also inhuman, an explanation was in order. With regard to measures to protect Haitian workers, the report had not provided sufficient information on the question of forced labour. He drew the Committee's attention to a report from the International Labour Organisation (ILO), which stated that Haitians who worked in the Dominican Republic during the sugar-cane-cutting season were kept in virtually slave-like conditions. In fact, bands of police went to Haiti, extracted Haitian workers by force and transported them to the Dominican Republic for the sugar cane harvest. They were held in Haiti and prevented from returning to their country not by legal measures so much as by police methods. The Haitians were indeed subject to ill-treatment by the police. Nothing in the report suggested that that situation had changed during the past five years. The State party should clarify that difficult and painful issue.

13. Mr. BRUNI CELLI said that the problems of Haitian workers constituted the most important aspect of the human rights situation in the Dominican Republic. Unfortunately, the remarks by the representative of the Dominican Republic seemed to imply that her Government had viewed President Aristide as being more likely than the current Head of State to protect the rights of Haitian workers in the Dominican Republic. If the current international efforts to re-establish the Aristide Government proved successful, he wondered whether the Dominican Government would resume its deportations of Haitian workers at the same rate as under the previous Aristide administration.

14. He would appreciate additional information concerning the freedom of movement and the working conditions of Haitian workers in the sugar cane plantations. Further details should also be provided on the recruitment system

(Mr. Bruni Celli)

and the role of the "professional recruiters" who brought Haitian workers to the Dominican Republic at their own expense. Such illegal entry procedures meant that, under Dominican law, Haitian workers and their children could be deported at any time, since they did not have papers. In particular, the law which provided for the deportation of Haitians under the age of 16 and over the age of 60 needed clarification.

15. Mr. AGUILAR said that it was unclear from the report how the State party was responding to the Committee's previously expressed concerns regarding the issue of forced labour in the Dominican Republic. Moreover, despite the statement in paragraph 54 that the institution of slavery had been abolished in 1822, the report did not provide an adequate picture of the real human rights situation in the country; the Committee was thus compelled to rely on the ample information which it had received from other sources.

16. Paragraph 16, which stated that the Office of the Procurator-General of the Republic was the body which had competence to ensure full respect for human rights, was in conflict with paragraph 24, which stated that there was no entity at the governmental level which was directly responsible for supervision of the implementation of human rights. If that was true, then there were no guarantees that the Covenant would be implemented.

17. Paragraph 22, which indicated that any international instruments approved by the National Congress became part of the national legal order with the same rank or standing as any ordinary provision, implied that laws which derogated from the provisions of the Covenant could also become part of the national legal order. In paragraph 23, the concepts of approval and ratification were treated as interchangeable. It was unclear whether an international agreement was immediately converted into domestic law once it had been approved or ratified by the National Congress.

18. The Dominican representative's statement that she did not know of cases in which the provisions of the Covenant had been directly invoked in the courts was a matter of concern. It would be useful to learn whether, in view of the political disturbances that had taken place in the Dominican Republic in recent years, there had been any occasions on which human rights guarantees had been suspended. Article 37 of the Dominican Constitution, which provided for the suspension, in case of emergency, of several of the rights guaranteed by article 8 of the Constitution was in conflict with article 4, paragraph 2, of the Covenant.

19. With reference to paragraph 27 of the report, regarding the civil rights of aliens in the Dominican Republic, he found it unacceptable that a State party should implement the provisions of the Covenant on the basis of the principle of reciprocity.

20. Turning to paragraph 66, he requested clarification of article 85 of the Penal Code, under which any person who, by means of acts neither approved nor authorized by the Government, exposed Dominicans to reprisals against their person or their property, would be punished by exile. That implied that the Government might, on some occasions, authorize such reprisals.

(Mr. Aguilar)

21. The report left many questions about the treatment of Haitian workers in the sugar cane plantations unanswered. The information received by the Committee indicated that the plantations were militarized; workers were not permitted to leave and, if they attempted to flee, were pursued by the security forces and forcibly returned. Despite the statement in paragraph 30 of the report that the presence of all Haitians in Dominican territory was being regularized, recent press reports indicated that the authorities were not certain how many Haitian workers were present in the country. Those workers laboured under appalling conditions and frequently were not paid in cash, but with vouchers that could be exchanged only in the offices of the sugar company, at a discount of 25 per cent.

22. With regard to communication No. 193/1985, it was unclear whether the Government had taken any action to remedy the complainant's situation. The reporting State should clarify its extradition procedures since, in view of the circumstances under which the complainant had been arrested, it was difficult to believe that he had benefited from due process of law. It would also be interesting to learn why the complainant, a French citizen, had been deported to the United States of America for sentencing.

23. Mrs. HIGGINS said that the lack of detail in the State party's second periodic report might indicate that a plateau had been reached in the Dominican Republic's progress in complying with the Covenant. Referring to sections I (a) and I (b) of the list of issues, she noted that the report had not clearly indicated the frequency with which the Covenant had been invoked in Dominican courts, or the general level of awareness of its provisions among Dominican lawyers and judges. Moreover, the Dominican Constitution's description of the circumstances under which states of emergencies could be declared and the extent to which civil and political rights could be restricted under states of emergency were much broader than the Covenant allowed. She wondered why the Dominican Republic had not simply altered its Constitution as it had agreed to do upon accession to the Covenant.

24. She asked what concrete measures the Dominican Government was taking to monitor the labour conditions of Haitian nationals working on Dominican sugar cane plantations. Simply to require notification of employment of Haitian nationals was not in itself an adequate measure. With regard to follow-up action taken in response to the Committee's views on communication No. 193/1985, she wished to know the reason for the delay in the State party's response.

25. Mr. POCAR said that he, too, had found the State party's report lacking in details; as a result, it was difficult to determine whether the Government had actually made any progress in implementing the Committee's recommendations. He agreed with Mrs. Higgins that the report was unclear about the standing of the Covenant in Dominican law, in particular whether the Civil Code took precedence, as paragraph 108 appeared to indicate.

26. He recalled that a representative of the Dominican Republic had stated, in connection with a previous periodic report, that there had been cases before Dominican courts in which the Covenant had been invoked. In the report before the Committee, however, no mention of such cases was made. He failed to

(Mr. Pocar)

understand that omission if progress was being made towards enhancing the standing of the Covenant in Dominican law.

27. Mrs. EVATT said that while the report frequently mentioned new laws enacted to give effect to the Covenant, it contained little information about the enforcement of those laws. She requested additional information concerning the competence, authority and procedures of the Centre for Human Rights mentioned in paragraph 26 of the report.

28. With respect to issues relating to article 8 of the Covenant, she requested additional information concerning: the role of the State Sugar Council in the recruitment of foreign labour and the use of armed security guards for that purpose; the rights of families to accompany workers to sugar cane plantations; government efforts to regularize the status of migrant workers through documentation; the use of vouchers instead of the national currency as wages; and the right of plantation workers to organize and to engage in collective bargaining with sugar producers. She also wanted to know what agencies had been established to act on behalf of individual workers in cases of disputes with employers.

29. Mr. MAVROMMATIS said that, contrary to claims made in the report, it appeared that the Covenant had relatively low standing in Dominican law. He did not fully understand the State party's response to the Committee's questions about reciprocity, particularly with regard to the Covenant's applicability to the treatment of aliens.

30. It had been well established that round-ups of Haitian workers were still occurring; that living conditions in the labour camps were abysmal, and that the freedom of movement of Haitian workers was often constrained. It was the State party's responsibility under the Covenant to enforce laws against such abuses, and the most effective means of doing so was close monitoring by labour inspectors and social services personnel.

31. The sweeping claim that there was no discrimination in the Dominican Republic on the basis of national origin (para. 28) was clearly at variance with statements made elsewhere in the report. He hoped that the State party's future reports to the Committee would be more detailed.

32. Mr. FODOR agreed with previous speakers regarding the State party's responses to items I (d) and I (g) of the list of issues. The Dominican Government had a responsibility to demonstrate that measures had been taken to ensure compliance with the provisions of the Covenant. It was not clear from the report whether any bodies existed to coordinate or certify enforcement of compliance measures. In particular, there did not appear to be any established mechanism whereby individual complaints could be brought to the attention of the authorities.

33. With regard to specific measures to resolve the problems mentioned in the list of issues, he wondered to what extent articles 23 of the Covenant, concerning the protection of families, had been honoured in practice. He also sought further information regarding discrimination on the basis of skin colour

(Mr. Fodor)

in the Dominican Republic and the measures taken by the Government to provide assistance to undocumented Haitian minors. He also wished to know whether the increased public awareness of the problem of violence against women mentioned in the report, had yielded any concrete results.

34. Mrs. CHANET agreed that the State party's response regarding the conditions of Haitian workers had been incomplete. According to information collected by ILO, the Lawyers Committee on Human Rights and reports in the press, Decree No.417-90 had had little impact. Employers who refused to abide by the decree had not been sanctioned, and the Government itself, through the armed forces, had apparently been involved in the involuntary recruitment of workers. Moreover, conditions in the camps had shown no signs of improvement: workers continued to complain of being confined, and children continued to be deprived of schooling. According to the Lawyers Committee for Human Rights, no workers had received work contracts.

35. She requested clarification regarding the nationality of those affected by the recent deportation decree 233/1991 and the exact circumstances of that deportation. According to press reports, members of the police and the military had destroyed the nationality documents of a number of Dominican nationals of Haitian descent before expelling them. If the reports were accurate, those actions represented important violations of article 8 of the Covenant. Finally, she wished to know what actions the State party had taken in response to the Committee's views on the Giry case (communication No. 193/1985).

36. Mr. WENNERGREN said that, while the report provided much useful information, he would have welcomed more details concerning the difficulties encountered in the actual implementation of the provisions of the Covenant. For example, paragraph 54 of the report merely stated baldly that the institution of slavery had been abolished in the Dominican Republic in 1822, with no effort to address the concerns expressed previously by the Committee over the use of forced labour on sugar cane plantations. He wondered whether the authors of the report were unaware of their country's previous dialogue with the Committee; greater continuity between successive periodic reports was called for. He fully shared the concerns expressed by Mrs. Chanet concerning the working conditions on the sugar cane plantations, which were totally unacceptable under the Covenant.

37. With regard to the situation of Haitian citizens in the Dominican Republic (para. 30), he was surprised that no mention had been made of Presidential Decree No. 233-91, which was a shocking measure from both a humanitarian and a human rights point of view. Under article 4 of that decree, the Minister of Labour was responsible for ensuring the repatriation of foreign workers under 16 and over 60 years of age, with the full cooperation of the Ministry of the Armed Forces and the Ministry of Foreign Affairs, as well as the national police and the armed forces. According to reports, the police and armed forces had been responsible for cruel and inhumane treatment of workers, and there had been many instances of grave human rights violations.

38. Several members had expressed concern over the lack of supervision of respect for human rights by public officials, such as army and police personnel. It appeared from the report that the Office of the Procurator-General of the

(Mr. Wennergren)

Republic bore sole responsibility in that field; accordingly, he would welcome information concerning the steps the Office had taken to investigate human rights abuses in the context of the repatriation of foreign workers and the results, if any, that had been achieved in terms of the prosecution and punishment of members of the police and armed forces found to be responsible for such abuses. He would also like to know what resources and staff were available to the Office and what facilities it had for the promotion and protection of human rights.

39. Mr. EL-SHAFEI said that he shared the grave concern expressed by other members over the expulsion of foreign workers, which entailed violations of articles 2, 8, 12, 13 and 26 of the Covenant. He could understand that the Dominican Republic might wish to take measures to regularize the situation of minors in response to the severe criticism of child labour made by ILO and other international organizations, but found it illogical and incredible that the country should seek to expel workers who had been resident there for 30 or 40 years and had made a substantial contribution to the Dominican economy. The Government appeared to be taking advantage of the destitute and vulnerable situation of those workers.

40. He would also welcome information on the procedure for incorporating the International Covenant into national law. It was still unclear whether that required an act of parliament, the enactment of new laws or some other procedure.

41. Mr. PICHARDO OLIVIER (Dominican Republic) said that, for international instruments to be incorporated into domestic law, they must first be ratified by the two chambers of the National Congress and then promulgated by the Government in the official gazette, following which they became law applicable throughout the territory of the Dominican Republic. That procedure had been followed for the International Covenant on Civil and Political Rights, which now formed part of domestic legislation. Under the Constitution, international instruments took precedence over domestic legislation in the event of conflict. The provisions of the Covenant could be invoked in the courts, although his delegation was so far unaware of any cases in which court judgements had been based specifically on those provisions.

42. Several members had expressed concern about the principle of reciprocity, referred to in paragraph 27 of the report. It was true that the Civil Code provided for aliens to be granted civil rights on a basis of reciprocity. However, the Civil Code predated the International Covenant and had not yet been amended accordingly, as perhaps it ought to be. In any case, now that the Covenant was part of the domestic legal order, aliens enjoyed the same civil and political rights as Dominican citizens.

43. The provisions of the Penal Code concerning expulsion of aliens were mainly intended to deal with cases where the internal and external security of the State were threatened. In practice, those provisions had not been used for many years and should perhaps be amended. A new law on immigration containing no provisions on the subject of expulsion was currently being drawn up with the help of advisers from international organizations, including the International Organization for Migration.

(Mr. Pichardo Olivier,
Dominican Republic)

44. The expulsion of Haitian citizens under the age of 16 pursuant to Decree No. 233-91 had been a response to complaints concerning the employment of minors in the agricultural sector. The Government had investigated those complaints and found that the minors in question had been recruited in their own country by Haitian nationals, who had lured them to the Dominican Republic with promises of high earnings. In many cases, they had no family or relatives in the Dominican Republic. In the light of the situation prevailing in Haiti, the measure had been suspended. His delegation would convey the Committee's concern to the Dominican Government so that steps could be taken to deal with the situation.

The meeting rose at 6.05 p.m.

CCPR

UNITED
NATIONS

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1214
26 March 1993

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1214th MEETING

Held at Headquarters, New York, on
Friday, 26 March 1993, at 10 a.m.

Chairman: Mr. ANDO

later: Mr. EL-SHAFEI

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued) (CCPR/C/70/Add.3)

Third periodic report of the Dominican Republic (continued)

1. At the invitation of the Chairman, Mr. Pichardo Olivier and Mrs. Abreu de Polanco (Dominican Republic) took places at the Committee table.

2. The CHAIRMAN said that the Committee would continue consideration of section I of the list of issues.

3. Mr. PICHARDO OLIVIER (Dominican Republic) said that his Government shared the concern about the situation of Haitian nationals in the Dominican Republic. It had been reported that they were recruited in Haiti by the Dominican police and held under conditions of slavery to perform forced labour in the Dominican Republic. As a result of widespread poverty and the political situation in Haiti in recent years there had been massive emigration from Haiti to the Dominican Republic, a country which also suffered from poverty, overpopulation and unemployment and bad health, education and housing problems. No exact figure was available, but an estimated 500,000 Haitians lived in the Dominican Republic. Only a small portion of that number worked in the sugar-cane fields; the rest were employed in the same areas as Dominicans. There was no denying that illegal workers were vulnerable to exploitation. However, slavery was not practised in the Dominican Republic. Furthermore, there was no proof that Haitians had been recruited by Dominicans in Haiti: they had come to the Dominican Republic of their own free will in search of a better life. Their abuse by unscrupulous employers did not stem from any Government policy. In recent years, sugar production had dropped considerably as a result of low commodity prices on the international market. Much of the land had been converted to other crops and the remaining sugar-cane fields were undergoing mechanization with assistance from the International Labour Organisation (ILO). Many Haitian sugar-cane cutters were beginning to work with other crops and in construction. With regard to the living conditions of sugar industry workers, it should be noted that Dominicans shared the same conditions as Haitians. ILO had sent a delegation to assist in the modernization of workers' housing and the provision of safe drinking water and electricity. In any event, because of mechanization, the jobs in question would be gradually phased out.

4. The flow of Haitian nationals to the Dominican Republic was largely due to political and economic problems in Haiti; the Dominican Republic was the most easily accessible State. It had accepted the Haitians and had given them refugee status in conformity with the Convention on the Status of Refugees. The problem would be solved only when Haiti achieved a solution to its own difficulties.

5. Mrs. ABREU de POLANCO (Dominican Republic) said that there was no denying that the working and living conditions of sugar-cane cutters were poor, but there had been significant improvement since 1991 because of her Government's policy of working with ILO, which had taken an interest in the situation. It had been reported that Haitian minors working in the Dominican Republic had been

(Mrs. Abreu de Polanco, Dominican Republic)

repatriated. Many Haitian sugar-cane workers brought their children with them to help; when they were informed that their children could not work, they generally preferred to return home. The situation had improved, however, and Ministry of Labour Statistics showed that fewer than 10 per cent of workers in the sugar-cane industry were minors. Wages, too, had improved; they were no longer paid in coupons, but in cash under the supervision of Labour Department inspectors. In fact, some sugar-industry workers earned more than some urban workers. Eleven labour inspectors continuously visited sugar mills and cane fields to verify that proper labour practices were followed.

6. As stated in the earlier report, Dominican workers lived in barracks (barracones) under the same conditions as Haitian workers. Those conditions had improved, however, as a result of the efforts of private organizations and the Ministry of Labour. As mentioned at the previous meeting, a decree had been issued (Decree No. 417-90) with a view to regularizing the situation of Haitian workers and more than 33,000 temporary work permits had been issued. Despite its own problems with poverty, the Dominican Republic had offered support to its Haitian brothers and had absorbed many of them into the workforce, often depriving Dominican nationals of employment.

7. With regard to communication No. 193/1985, the Minister for Foreign Affairs had received no documentation on that case to date. Since the Government strictly observed any deadlines established by the Committee, its failure to respond was due no doubt to a lack of communication.

8. As noted in the report, the Office of the Procurator-General was the body which had competence to ensure the protection and promotion of human rights. Non-governmental organizations such as the National Human Rights Union and local human rights committees transmitted reports of alleged human rights abuses to the Government, which attempted to investigate them. Such organizations had absolute freedom to conduct their activities.

9. Mr. MAVROMMATIS had stated that 400,000 Haitian minors were working in the Dominican Republic. The figure had never been as high as that, but, as a result of Government efforts to regularize the situation, the number of children working in the cane fields had dropped considerably.

10. With regard to violence against women, most such incidents involved domestic disputes, and women were usually reluctant to take any legal action. The statistics were not significant. As the report mentioned, women enjoyed many privileges and played a major role in the economic life of the country.

11. With regard to the repatriation of Haitian nationals under Presidential Decree No. 233-91 there had indeed been some incidents of excesses on the part of the police. All those involved, however, had been brought to trial. Given the history of military rule, the current civilian Government had to exercise increased vigilance over the police forces. When the police committed excesses, they were brought to justice and suffered the full consequences of their actions.

12. Mr. PRADO VALLEJO said it was reported that Haitians were repatriated by the police without being allowed to take their personal property or to see their families. That seemed to him to be inhuman and degrading treatment. Although he realized that it was not a Government policy, it was apparently a police policy, and he would like to know what steps the Government was taking to control the police. Apparently as a result of Decree No. 417-90, Haitian workers also required permits, which were rarely issued, in order to change jobs or location, a practice which violated basic human rights.

13. Mr. MAVROMMATIS said that he had mentioned that 400,000 minors, not only Haitian minors, were working in the Dominican Republic. Only 11 inspectors to monitor such a large number was clearly inadequate.

14. The Dominican representative's reply about the position of the International Covenant on Civil and Political Rights in the legal system had been incomplete. The Committee had been informed that, while the Covenant took precedence over domestic legislation, its provisions might not be applied unless they were invoked. Judges must, however, apply the law which took precedence. In paragraph 107 of the report, the Government admitted that discrimination between legitimate and natural children was practised in respect of inheritance rights. Again, in paragraph 108, it stated that some of the legislation in force was not in keeping with the international covenants or instruments which had become part of internal law. He would therefore like to know the true status of the Covenant in the internal law of the Dominican Republic.

15. Mr. BRUNI CELLI said that the history of the relationship between the Dominican Republic and its neighbour, Haiti, could explain some of the recent developments. Although there was poverty in the Dominican Republic, conditions in Haiti were worse, and it was thus natural that Haitians should travel there in search of a better life. Most immigration was illegal and outside Government control, but there was some complicity between the Haitian and Dominican authorities in that regard. Indeed, illegal workers were vulnerable to exploitation throughout the world. A country had the right to regulate the foreign population in its territory, but in so doing, it must respect its international and legal commitments. Working conditions throughout the sugar industry were poor, but it must be noted that the State was the main employer. The Dominican Government had stated that illegal workers could be expelled on the grounds that they had no papers, but many such workers held identity documents issued by the State-run sugar company. Since the problem was directly related to political events in Haiti, he wondered what action would be taken by the Dominican Government if the former Government of Haiti was restored.

16. Mr. DIMITRIJEVIĆ said that the provisions of the Covenant appeared to have been misinterpreted where the issue of reciprocity was concerned. According to paragraph 27 of the report, the Civil Code granted to aliens the same civil rights as those established for nationals of the Dominican Republic under treaties by which the country of the alien granted those rights to Dominican

(Mr. Dimitrijević)

nationals, on the basis of the principle of reciprocity. At the same time, the political rights of aliens could be limited. Since not all civil rights were necessarily protected in traditional civil codes, and some, such as freedom of expression, could be construed as either civil or political, the Committee needed to know which rights were protected in the Civil Code and were subject to reciprocity, in order to determine whether aliens did in fact enjoy the same civil rights as nationals. The indications given by the delegation of the Dominican Republic that the Civil Code might be revised were not in themselves satisfactory, since the issue of reciprocity could always be waived.

17. Noting that Presidential Decree No. 233-91 ordered the repatriation of those Haitian workers who were aged over 60 and under 16, he wondered whether the Dominican authorities considered age to be an acceptable basis for discrimination, contrary to the provisions of the Covenant. Furthermore, it was inevitable that when large numbers of people were being repatriated irregularities would occur, as a result of incompetence or ill will on the part of officials. He asked what procedures were available to victims to obtain an effective remedy, in accordance with the provisions of article 2, paragraph 3 (a), of the Covenant.

18. Mr. El-Shafei (Vice-Chairman) took the Chair.

19. Mr. AGUILAR said he was concerned by the information that, although Presidential Decree No. 233-91 had been suspended, it theoretically remained in force. The Committee felt that certain provisions of the Covenant were breached by the effects of the Decree relating not only to the repatriation of Haitians, but also to the treatment accorded to them in the process. It was widely felt that the Haitians concerned had been not merely repatriated, but forcibly thrown out of the Dominican Republic. He wished to know, therefore, whether the Decree would be reinstated in the event that democracy was restored in Haiti. In the light of other developments within the system of the Organization of American States (OAS), it appeared as if the suspension of the Decree was tantamount to support by the Dominican Government for the coup regime in Haiti.

20. In addition, he noted that there were at least 12,000 Haitians working illegally in the Dominican Republic and wondered whether there was a State policy determining the conditions of their employment. The identity of their employer was of no interest to the Committee: its concern was to ensure that the conditions under which they worked were acceptable. He had the impression that the authorities were renouncing responsibility for the matter and that some of the provisions of the Covenant had been violated.

21. Turning to the case addressed in communication No. 193/1985, involving a Dominican national, he noted that the matter had come before the General Assembly in 1990, at which time a representative of the Dominican Republic had been present and that it had been discussed during the Committee's session in 1991, following which the Dominican Republic had been apprised of its views. To date there had been no response from the Dominican authorities.

22. Mr. NDIAYE recalled that in March 1990 he had reported to the Committee on investigations by a group of experts of ILO into the treatment accorded by the authorities to Haitians in the Dominican Republic. In his view, the practice of forced labour was attested in the Dominican Republic and the reports by ILO had found exploitation and unfair treatment. The response of the Dominican authorities to the allegations, which concerned not isolated cases but well-substantiated and systematic practices, had been very evasive. Now, some three years later the Committee found itself at a standstill: indeed, conditions in the Dominican Republic might even have deteriorated. He urged the representatives of the Dominican Republic not to return to the Committee with similarly evasive and unconvincing affirmations that there was no slavery in their country and that the provisions of the Covenant were strictly applied, since it was evident that working conditions in the Dominican Republic were worse than they had been for centuries.

23. Mr. LALLAH expressed concern at the lack of transparency in the Committee's dialogue with the Dominican Republic. Paragraph 4 of the report indicated that the Covenant and its Optional Protocol formed part of Dominican domestic legislation, yet it was apparent that the provisions of the Covenant were not well known in the country. In particular, he wished to know how the Dominican Republic viewed its obligations under the Covenant; whether its report had been drafted with the assistance of members of the legal profession; whether the judiciary was made aware of the country's obligations under the Covenant; and what would ensue when the representatives returned to their country and reported on their dialogue with the Committee.

24. The dialogue appeared to be hampered by a serious lack of communication, since it was being handled in the Dominican Republic as a foreign relations exercise and not by the appropriate bodies. Despite assertions by the delegation that the Ministry of Foreign Affairs had received no communications from the Committee, the Committee had evidence that it had submitted such communications to the Dominican authorities on several occasions. Unless such misunderstandings were cleared up, there could be no fruitful dialogue.

25. Mr. WENNERGREN asked what obligations were placed upon the Procurator-General, whose Office was the only central body for the protection of human rights, what resources were placed at his disposal and what initiatives he had undertaken with respect to the situation of human rights, particularly in the context of the repatriation operations carried out under Presidential Decree No. 233-91. Some police excesses during that operation had been admitted, but the massive scale of the operation was bound to have entailed widespread violations of the Convention and he wondered whether any remedial measures had been adopted.

26. According to article 55 of the Constitution, the President of the Republic was the head of the public administration and, by extension, had authority over the Procurator-General, that relationship could explain the lack of initiative on the part of the Procurator-General, as the repatriation had been ordered by presidential decree.

27. Mr. FODOR, speaking as Special Rapporteur on follow up to the views of the Committee, sought clarification on the case referred to in communication 193/1985. In particular, he wished to know whether it was only the delegation which had no information, or whether the State party itself had not received the views of the Committee. According to the documentation of the Secretariat, the Committee's views had been adopted on 20 July 1990 and two notes verbales had been sent by the Secretary-General to the State party, following that adoption, through the Permanent Representative of the Dominican Republic in Geneva. The first note verbale, transmitting the views of the Committee, had been sent on 5 September 1990 and the second, informing the State party of the appointment of the special rapporteur on follow-up and requesting information by 13 June 1991 on the measures adopted in relation to the views of the Committee, had been sent on 13 March 1991.

28. Mrs. ABREU de POLANCO (Dominican Republic) expressed serious concern about the issue raised by Mr. Fodor. It was not the practice of the Dominican Republic to ignore any observations by an international organization, and the authorities competent to deal with complaints of such a nature would normally have attended to the matter in question. As no communication appeared to have reached the competent authority, she wondered whether the case could be reopened and whether the Committee's recommendations could be resubmitted to the authorities of the Dominican Republic.

29. Mr. PICHARDO OLIVIER (Dominican Republic) said, in response to the concerns expressed by Mr. Prado Vallejo concerning possible abuses committed during the repatriation of Haitian workers, that the exercise had been carried out under Presidential Decree No. 233-91 and that the deportees had been permitted to take all or part of their personal possessions, in so far as transport facilities were available. Action had been taken against those guilty of perpetrating violations of human rights. He confirmed that the Presidential Decree had effectively been suspended and that there were no more repatriations, but he was unable to say whether it might be reinstated in the event of changing political circumstances in Haiti. He undertook to inform his authorities of the concerns expressed by the Committee in regard to the decree and assured members that steps would be taken to prevent any further violations should the decree be reinstated.

30. As to whether Haitians in the Dominican Republic could change their employment, he said that they were free to work where they wished. If they were recruited for a particular enterprise, they were obliged to work for that enterprise but could always break their contract, as often happened, and seek employment more appropriate to their skills and qualifications.

31. In response to the question by Mr. Mavrommatis concerning the status of the Covenant, he said that the provisions of the Covenant were applicable in the courts under Dominican legislation but that, owing to ignorance of those provisions on the part of victims and their legal representatives, there was no record of any sentence having been imposed on the basis of the Covenant. That notwithstanding, the Covenant was mandatory in the Dominican Republic and could be invoked in the courts.

32. Mrs. ABREU de POLANCO (Dominican Republic), referring to section I (a) of the list of issues, said that, although most lawyers did not invoke the

(Mrs. Abreu de Polanco,
Dominican Republic)

Covenant, they could do so since it was part of the domestic law of her country. Those lawyers who were conversant with all the international covenants did invoke them for the benefit of their clients. Recently, the situation regarding the observance of human rights had been acceptable. Human rights committees and non-governmental organizations had not been carrying out any kind of activities to make people aware of the Covenant. As far as the civil rights situation was concerned, under article 9 of her country's Constitution, foreigners were forbidden to participate in political activities. They were entitled to the same rights as citizens of the Dominican Republic as far as other basic rights under the Covenant, such as the right to free speech, worship, and social rights, were concerned. The only contradiction was with articles 82 and 84 of the Civil Code, which allowed foreigners to be part of the government of municipalities, which in fact meant that they had to belong to a political party.

33. With regard to the points raised concerning Presidential Decree No. 233-91, she said that the Procurator-General was, indeed, appointed by the Executive, but since the President was firmly in favour of protecting and guaranteeing human rights, the Procurator-General would at no time fail to observe the application of the law because the Decree concerned the repatriation or deportation of Haitians without documents. The police and army officers who had committed abuses had been suspended. They would be brought to trial and punished according to the gravity of their offences.

34. Mr. PICHARDO OLIVIER (Dominican Republic) said that Mr. Bruni Celli was partly correct implying that the identity documents issued by the State-run sugar company to Haitian workers permitted them to remain in the country legally for an indefinite period because workers under contract to the company were given the identity documents as agricultural workers for the duration of their contract. Haitians usually entered the Dominican Republic illegally without any papers at all, particularly since the situation in Haiti with regard to civil registration was very poor and a large proportion of the population did not even have national identity papers. The worker identification documents issued under the State-run sugar company's contracts were respected by the immigration and police authorities because, under the labour laws and the Constitution, contracts could be drawn up for temporary workers under those conditions. It was assumed that once a contract had expired, the person concerned would return home or legalize his situation under the appropriate immigration laws. The document could not be used as a residence permit.

35. The influx of Haitians continued and the Dominican authorities had decided, as a humanitarian gesture, not to exercise any kind of action against them because, if the appropriate immigration laws were applied strictly, and they were returned to Haiti, it would put an enormous strain on the Haitian State. Some Haitians had even been given the status of refugees in accordance with the relevant United Nations convention.

36. Contrary to what Mr. Aguilar had implied, his Government was not justifying the exploitation of Haitian workers in the sugar industry; in fact it condemned such exploitation as a violation of the provisions of the Covenant. The

(Mr. Pichardo Olivier, Dominican Republic)

Government did not know why such violations occurred and Decree No. 417-90 had been adopted precisely to protect the rights of workers.

37. The Dominican Republic had not violated the embargo against Haiti as a way of helping the military Government; on the contrary, it had observed it. The frontier between the two countries was difficult to control and Haitians crossed the frontier illegally to make purchases in the Dominican Republic; that was a normal phenomenon between two countries with a common land frontier. His Government had even requested international organizations to provide humanitarian assistance in the form of food to Haiti, and the food that had been sent at the request of international organizations such as the Red Cross and the United Nations.

38. Mr. Ando resumed the Chair.

Right to life, liberty and security of persons; treatment of prisoners and other persons deprived of liberty; right to a fair trial (articles 6, 7, 9, 10 and 14 of the Covenant) (section II of the list of issues)

Freedom of movement and expulsion of aliens; freedom of religion, assembly and association; equality of sexes and protection of the family; right to take part in the conduct of public affairs; and rights of persons belonging to minorities (articles 3, 12, 13, 18, 21, 22, 23, 24, 25, 26 and 27 of the Covenant) (section III of the list of issues)

39. The CHAIRMAN read out section II of the list of issues concerning the third periodic report of the Dominican Republic, namely: (a) the rules and regulations governing the use of firearms by the police and security forces, any violations of those rules and regulations and measures taken to prevent their recurrence; (b) measures taken by the authorities to ensure strict observance of article 7 of the Covenant and the admissibility before the courts of confessions or testimony obtained under duress; (c) the risk of being punished by suspension from duty without pay for up to 30 days as a deterrent for officials who resorted to torture; (d) information on the powers of the Directorate General of Prisons in the matter of supervision of penal establishments, and independent bodies, if any, empowered to visit places of detention and to receive complaints; (e) additional information on any problems and difficulties in observing the limitation of the period of police custody to 48 hours and in allowing lawyers to see their clients; (f) information on any plans to amend the rules on the prevention of liberty to guarantee the prompt notification of a person's family upon his arrest; (g) the outcome of the study aimed at entrusting the appointment of judges to a judicial council independent of the executive and legislative powers; (h) information on the possibility of accused persons obtaining free legal assistance and the assistance of an interpreter.

40. He next read out section III of the list of issues, namely: (a) the suspensive effect, if any, of appeals against expulsion orders and statistics on the number of expulsions each year and the grounds on which they were ordered; (b) any measures that the Government planned to take with respect to the religious sects mentioned in paragraphs 89 to 90 of the report; (c) the actual

(The Chairman)

situation with regard to equality of men and women at work and in respect of participation in the conduct of public affairs; (d) the reasons why the proposed new Labour Code did not recognize the right to strike of civil servants; (e) the conformity with article 25 of the Covenant of the provisions denying to members of the police and the armed forces the right to vote and to be elected; (f) the implementation of article 27 of the Covenant in the Dominican Republic in the light of the statement in paragraph 116 of the report that there were no ethnic, religious or linguistic minorities.

41. Mrs. ABREU de POLANCO (Dominican Republic), referring to section II (a) of the list of issues, said that the use of firearms was governed by Act No. 36. Members of the armed forces, the police and some high-ranking civil servants were authorized to carry firearms. Many private individuals could also obtain permits for firearms provided they met the requirements set out in the relevant act. As a result of recent violations and some unfortunate incidents, efforts had been stepped up to disarm civilians and the rules governing the granting of permits for firearms had been tightened.

42. With respect to section II (b), both the Penal Code and the Constitution prohibited torture, and lawyers reported the matter to judges when confessions were obtained under duress in order to ensure that they would not be admissible before the courts. Allegations of torture in prison were investigated and those found to be responsible were put on trial and punished under the relevant Code. The Directorate General of Prisons had been established under Act No. 224 of 1984 to exercise greater oversight and to ensure that all the Standard Minimum Rules were observed in the protection of prisoners. Many non-governmental organizations had also been evaluating and monitoring the conditions of prisoners. A commission on prison reform, headed by the Cardinal and made up of prominent personalities, had noted the shortcomings of the prison system and, as a result, prisons had been built in various parts of the country to meet modern prison standards.

43. Concerning section II (e), with a few exceptions, no difficulties had been experienced in observing the limitation of the period of police custody to 48 hours and in allowing lawyers and family members to see detainees. She pointed out that the Dominican Republic had once been under a military dictatorship and that members of the armed forces still showed traces of that mentality. There might be some abuses in exceptional cases, depending on the gravity of the crime committed.

44. With regard to section II (g) of the list of issues, a preliminary draft had been submitted to the Legislature on the establishment of a Judicial Council, which, through a commission made up of the President of the Senate and deputies, would appoint the judges. That would allow judges greater independence in the exercise of their duties and should lead to a more independent judiciary.

45. Concerning section II (h) of the list of issues, articles 221 and 263 of the Code of Criminal Procedure established that persons who could not afford to pay for such services were given free legal assistance and the assistance of an interpreter.

(Mrs. Abreu de Polanco, Dominican Republic)

46. Referring to section III of the list of issues she confirmed that appeals could be made against expulsion orders (section III (a)) and said that certain religious sects had been using radio and television programmes to speak negatively about other religions (section III (b)). Although Roman Catholicism was the State religion of the Dominican Republic, freedom of worship was guaranteed by the Constitution. The authorities could intervene only when the activities of a particular sect or religion threatened the integrity of the State.

47. With regard to section III (c), she noted that the legislation and Constitution of the Dominican Republic mentioned Dominicans of both sexes. Everyone had equal rights before the law to employment. Women played a very substantial role in the life of the country; for instance, there were women Ministers and women made up over 60 per cent of the staff of banks, the public administration and the judiciary.

48. Concerning section III (d), the new Labour Code did not prohibit the right to strike of civil servants. However, the State, as the provider of certain essential services to the community, had to ensure that the community received those services and therefore, people working in key Government utilities such as water and electricity corporations were not allowed to strike. Other public servants, such as doctors, nurses and transport workers regularly went on strike.

49. With respect to section III (e), the current legislation prohibiting members of the armed forces from involvement in political activity was not an absolute ban. Those wishing to enter politics first had to resign from armed forces and then wait a year before embarking on their new career. She was sure that in the new amendments to the 1966 Constitution currently being debated by the political parties and the general public, those provisions, among others, would be changed.

50. As for section III (f), there was no special legislation concerning ethnic minorities because there were really no such minorities in the Dominican Republic. Haitians were the largest group of foreign nationals and they, like other foreigners, enjoyed the same rights as Dominicans under article 8 of the Constitution.

51. Mr. PRADO VALLEJO observed that it appeared, unfortunately, that the Government of the Dominican Republic was unable to control its National Police. He cited three specific cases in which the police had ignored judicial orders - and even repeated judicial orders - for the release of innocent students, one of whom had later died in custody as a result of torture. In that instance, which had caused a national scandal, the police officer in question had been identified but had never been punished. A 1991 report on human rights in the Dominican Republic by the United States Department of State referred to 27 similar cases of police detention of prisoners in defiance of the courts. It also stated that large numbers of people were routinely rounded up and detained in police sweeps, a practice that had been strongly criticized by the Attorney-General of the Dominican Republic, members of the Legislature and the Archbishop, who had charged that the police were indiscriminate and abusive in

(Mr. Prado Vallejo)

carrying out the sweeps. Maltreatment by the police, even including torture, seemed to be common in the Dominican Republic, and he wondered what the Government planned to do to make its police force respect the rule of law and the human rights of its citizens, and to punish those guilty of such offences. Suspension without pay for up to 30 days (para. 46 of the report), was very light punishment indeed for the crime of torture.

52. Although paragraph 55 of the report indicated that the Constitution stipulated a 48-hour time-limit for detention in police custody for purposes of investigation or interrogation, that time-limit was not always observed in practice, according to paragraph 57. Similarly, the remedy of habeas corpus was discussed in paragraph 59, but according to paragraph 61 it was not always applied. He wondered what could be done to remedy those serious violations of human rights.

53. Referring to section III of the list of issues, and specifically the right of assembly and the right to form trade unions, he cited a report of the International Labour Organisation (ILO) regarding abrupt dismissals of Dominican trade union members on 11 November 1990 in order to bar them from union activities. Repression of trade unionists was particularly prevalent in the economic free zones in the country. According to the ILO report, the President of the Dominican Republic had defended such dismissals and said that they would continue.

54. With regard specifically to the situation of Haitians employed in the Dominican Republic, a change of attitude on the part of the Government was essential.

55. On the matter of freedom of religion, the fact that the Penal Code safeguarded the practice of the Catholic religion or "one of the religions tolerated in the Republic" (para. 87 of the report) did not seem to satisfy the requirements of genuine freedom of religion. He would also like more information on the religious sects referred to in paragraph 90; specifically what form the coercion took, how such sects were a threat to the population, and exactly what they were preaching that was so dangerous.

56. Mr. SADI, noting that parts of the report had been so poorly translated into English as to be virtually incoherent, wondered whether the reference in article 260 of the Penal Code to the other religions "tolerated" in the Dominican Republic might be one such instance of mistranslation. Paragraph 87 of the report cited safeguards specifically for the Catholic religion under articles 261 and 262 of the Penal Code, and he wondered whether other religions had equal protection.

57. With regard to section II (b) of the list of issues, he asked whether any of the known cases of torture had actually been investigated, and if so, how many, and to what effect. He agreed that suspension without pay for 30 days for the crime of torture (sect. II (c)) was, indeed, too light a punishment; but he found it even worse that under the Dominican Penal Code any public official acting on orders from a superior was exempt from punishment (para. 17 of the

(Mr. Sadi)

report), a principle that was contrary both to customary law and to the Covenant.

58. Concerning section II (e) of the list of issues, it was not clear whether it was automatic for a suspect to be either released from custody or imprisoned after the 48-hour time-limit stipulated in the Constitution had elapsed, or whether a special judicial procedure was required. If, indeed, over 70 per cent of the prison population in the Dominican Republic was being held pending trial (para. 58 of the report), it was difficult to see how the 48-hour time-limit could be respected; indeed, the United States Department of State report referred to cases of illegal and prolonged detention.

59. With reference to section III of the list of issues, the punishment of exile stipulated in article 85 of the Penal Code (para. 66 of the report) did not seem to be in keeping with the Covenant, and he wondered if it applied only to aliens.

60. Regarding article 23 of the Covenant, the Dominican Civil Code, by granting exclusive right of custody over a natural child to the father (para. 105 of the report), did not appear to guarantee equal parental rights to both spouses, as claimed. Similarly, paragraph 108 of the report seemed to be an admission that some of the legislation in force did, in fact, violate article 24 of the Covenant.

61. Mr. El-Shafei, Vice-Chairman, resumed the Chair.

62. Mr. POCAR said that the whole purpose of having the Committee transmit to the States parties, well in advance, a list of the issues it wished delegations to discuss when their countries' reports were considered was to enable delegations to come prepared with adequate, detailed answers and to address all the concerns raised. It was regrettable that that was not the case with the delegation of the Dominican Republic. Indeed, many issues in sections II and III of the list had not been touched upon at all, and some of the comments made, for instance, on sections II (a) and II (b), had not been altogether to the point.

63. Perhaps the Dominican delegation was under the misapprehension that the information that had been provided three years earlier in the Dominican Republic's second periodic report sufficed. In that earlier report, it had been claimed that all public officials accused of crimes would be dismissed, investigated, and punished if guilty, in order to safeguard the human rights of citizens. According to independent evidence in the report by the United States Department of State, in 1991 alone, 2,218 policemen had been fired or retired for offences ranging from insubordination to murder. He had never seen such a high figure given for police abuse in any country and he wondered how that information could be reconciled with the duty of the Dominican Government to train its police and public officials properly and to instil in them an awareness that international standards of human rights must be upheld. As to the assertion in the second periodic report that officials guilty of such abuses were brought immediately to trial and sentenced, the three cases cited by Mr. Prado Vallejo from independent sources showed that the punishment was

(Mr. Pocar)

neither immediate nor effective. He himself could cite an additional instance of two officers charged with beating and seriously injuring a professor during detention: one of the officers had subsequently been promoted to captain, and there was no indication that the other had been disciplined in any way. He also cited a specific case of a Haitian who had been found dead in the Boca Chica police station; the officer guilty of the murder had been dismissed but no further legal action had been taken against him. If all such independent information was indeed accurate, the Dominican Republic had clearly taken a step backwards in the matter of human rights.

The meeting rose at 1 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1215
23 April 1993

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1215th MEETING

Held at Headquarters, New York,
on Friday, 26 March 1993, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the Dominican Republic (continued) (CCPR/3/70/Add.3)

1. At the invitation of the Chairman, Mr. Pichardo Olivier and Mrs. Abreu de Polanco (Dominican Republic) took places at the Committee table.

2. Mrs. HIGGINS said that she fully endorsed the views expressed by Mr. Prado Vallejo concerning the punishment for torture provided for under the Prison System Act of 1984. If the statistics given were correct, it was clear that the Act had not been effective. The Committee should recommend that more stringent sanctions be introduced for the torture and ill-treatment of detainees by public officials.

3. Turning to paragraph 50, she said that she would welcome an explanation of the difference between a penitentiary and a presidio. She was deeply concerned at the information provided in paragraph 58 to the effect that over 70 per cent of the prison population in the Dominican Republic was being held pending trial. The use of non-working days was hardly a solution, and other measures were needed to tackle the problem. It was clear from paragraph 57 that the 48-hour time-limit was routinely disregarded and legislation was needed stipulating that prisoners must be released if they had not been charged within that period.

4. With regard to article 12 of the Covenant, she agreed with Mr. Sardi that the punishment of exile was hard to justify. The relevant criterion should be whether the offences in question came within the terms of article 12, paragraph 3, of the Covenant. She noted that article 8, paragraph 4, of the Constitution provided for restrictions on freedom of movement. She wondered what such restrictions would entail and what kind of offences would give rise to them.

5. With regard to article 17 of the Covenant, she wondered whether it was appropriate, in a country which recognized the right to freedom of speech, for sanctions to be imposed against anyone insulting a minister of the Catholic religion. In any case, she would be interested to know why the sanctions applied to insults against Catholic ministers only, and not ministers of other faiths. On the question of religious sects, she could understand the desire to limit their activities if they posed a threat to the security of the State, but felt that it was unjustified to take action against them merely on the grounds that their beliefs did not correspond to any known religion.

6. With regard to article 19 of the Covenant, she was concerned that the provision contained in article 8, paragraph 6, of the Constitution prohibiting the expression of thoughts "prejudicial to the dignity and morality of individuals, to public policy or to propriety" represented an alarming limitation on freedom of expression. She agreed with the remarks made by other members concerning trade union rights under articles 21 and 22 of the Covenant in the special export-processing zones. Unionization was now permitted, but

(Mrs. Higgins)

when major companies had used large-scale dismissals to prevent the introduction of unions, there had been no effective intervention by the Government to guarantee the rights provided for under law. Recourse to the courts had apparently been ineffective and she would be interested to know what grounds had been cited for the dismissal of such cases.

7. With regard to article 24 of the Covenant, while she welcomed the frank admission that the provisions of Dominican law on the matter were incompatible with the Covenant, she wanted to know what practical steps would be taken to remedy the situation. The remarks pertaining to article 27 of the Covenant appeared somewhat contradictory. On the one hand, the report maintained that there were no ethnic, religious or language minorities in the Dominican Republic, while on the other it claimed that minorities were treated fairly and suffered no discrimination. Clearly, religious and linguistic minorities did exist, and it would be helpful if the Dominican Republic acknowledged that fact and provided more information on their situation.

8. Mr. LALLAH wondered whether the compilers of the report had sought information from the Ministry of Labour concerning the difficulties facing trade unions as well as the bare statistics concerning their numbers. He would be interested to know whether a special law on working conditions in the export processing zones enabled trade unions to operate freely in defence of workers' rights, as was usual in countries where such zones existed. Although the registration and operation of trade unions were now accepted in the zones, there had been many reports of extensive victimization of union officials, particularly by multinational companies. He wished to know whether sanctions were available to deal with such cases, whether victimization constituted an offence, and whether the Government was seeking to end such practices.

9. Miss CHANET expressed concern at the information given in paragraph 58 of the report that over 70 per cent of the prison population in the Dominican Republic was being held pending trial. She would welcome information concerning the legal arrangements governing pre-trial detention, particularly its maximum legal duration and its average duration in practice. She felt that the solution of using non-working days was barely adequate to address the situation. The Dominican delegation had said that incommunicado detention was used in accordance with the Covenant. She would be interested to know how that was done, since the Covenant contained no specific provisions on the matter.

10. According to a recent report of the United States State Department, health and sanitary conditions in prisons were extremely poor and minors were being detained together with adults. More information was needed on those questions. There had clearly been no improvement in the situation regarding the torture and ill-treatment of prisoners by public officials and the civil authorities needed to lay down proper rules and ensure that they were implemented. She would also welcome further information concerning the case of 27 prisoners, mentioned in the State Department's report, whose release order had been totally disregarded by the police.

11. With regard to article 13 of the Covenant, she was concerned about the astonishing number of restrictions on aliens provided for in article 13 of the Migration Act. Paragraph 6 of that article was particularly worrying and she

(Miss Chanet)

was curious to know what was meant by "incapacity". She also wanted to know what procedural guarantees were available to aliens facing deportation under article 13, paragraph 11 (e). In addition, she found it difficult to understand how a deportation order could be converted into a prison sentence of up to two years, as provided for in paragraph 11 (f). Such a sentence seemed very harsh, particularly since it was not open to appeal.

12. Mr. AGUILAR expressed surprise that, according to paragraph 17 of the report, a Dominican official who committed a crime on the orders of a superior could not be charged or brought to trial. That was a most disturbing situation and gave the impression that the Dominican legal system was still very backward and had failed to take account of important developments in international law. Although the report claimed that men and women enjoyed equal rights, some anomalies remained in the Constitution, which allowed Dominican women who married an alien to acquire the nationality of their husband but did not give men the same right. In addition, a female alien marrying a Dominican man could acquire his nationality, whereas a male alien marrying a Dominican woman did not enjoy the same right.

13. The report indicated that the death penalty had been abolished in 1924. However, that statement did not reveal the full picture, since extrajudicial killings had been commonplace under the dictatorship which had ruled the Dominican Republic for many years. Moreover, the most recent report of the United States State Department affirmed that the police had been responsible for various extrajudicial killings, yet no police officers had ever been brought to justice. Such incidents appeared to be on the increase and there were also reports of security forces firing on public demonstrations and of police death squads executing suspects. Again, those responsible had escaped with impunity. There were serious deficiencies in the administration of justice, judges were subject to intimidation, and, when convictions were obtained, sentences were rarely commensurate with the gravity of the offences committed.

14. The infant mortality rate given in paragraph 43 was alarmingly high. That was hardly surprising in a country where 47 times more resources were devoted to military spending than to health and education combined. The assertion that there were no registered cases of poliomyelitis in the country was meaningless, since the disease had been eradicated some years previously.

15. The State Department report had cited numerous cases of torture of prisoners by public officials, as well as the use of beatings to obtain confessions, yet the authorities had done nothing to investigate the situation. Under article 5 of the Prison System Act, victims of torture and ill-treatment were entitled to complain to the governor or the General Prison Directorate, but he wondered how effective those remedies were in practice. There had been repeated complaints that children in detention were being placed together with adults and he would like to know what the real situation was. With regard to the segregation of prisoners, there seemed to be a contradiction in the report between paragraph 53, which indicated that different categories of prisoners could be housed in a single building, and paragraph 63, which referred to separate units. He would welcome clarification.

(Mr. Aguilar)

16. Paragraph 56 of the third periodic report indicated that there was no standard procedure under Dominican law for informing relatives of anyone's detention and even spoke of disappearances. It was clear, therefore, that article 9 of the Covenant remained unsupported in Dominican legislation. It also appeared, from the text of article 13 of the Migration Act, as quoted in paragraph 70 of the third report, that the legal provisions governing aliens differed significantly from the remainder of the Dominican Republic's legislation; it was clear, for example, that habeas corpus was not respected in the case of persons detained for drug trafficking or other crimes and that persons could be held in detention in the Dominican Republic for up to two years simply for having entered the country illegally or for becoming indigent.

17. Mr. BRUNI CELLI said it appeared from the report that the Dominican Republic's judicial system was contrary to the spirit of article 14 of the Covenant. Paragraph 76 of the report in particular seemed to provide evidence of that. Moreover, it was known that an ex-President of the Republic had been tried before a court appointed by the new Government. Although the report indicated that efforts were being made to reform the judicial system, he wondered if anything was being done to ensure the right to an impartial trial until such time as a new judicial system was instituted.

18. Mr. WENNERGREN said that, although article 4 of the Dominican Constitution provided for independent branches of Government, there seemed to be no provision for ensuring that judicial orders would be complied with. In one case, that of Alessandro Cabrera, a person held in detention had twice been ordered released but the police had refused to comply. He asked for an explanation of what had happened in that case.

19. Although article 8 of the Constitution provided for the free expression of opinion, it had been reported that a private radio station in the Dominican Republic which wanted to broadcast in Creole had been threatened with closure if it did so. He asked for an explanation of that report.

20. Referring to paragraph 17 of the third report, he asked if it meant that public officials who had committed crimes on orders from their superiors were exempt from ordinary punishment for such crimes.

21. Mrs. EVATT, referring to paragraph 91 of the report and to the prohibition of certain broadcasts in Creole, asked whether it had been established by any authority that such broadcasts would be subversive or a threat to public order and why it had been decided to impose a blanket ban on broadcasting in a particular language rather than to prosecute specific offences. She asked whether there was any provision for review of such bans and commented that without such review by an independent judicial authority it was difficult to establish the legality of such acts.

22. Referring to article 26 of the Covenant, she asked whether any progress had been made in implementing the draft law on eliminating discrimination in civil, commercial, penal and agrarian matters.

23. Mr. MAVROMMATIS said it seemed clear from the third report that legislation still existed in the Dominican Republic which was incompatible with the Covenant

(Mr. Mavrommatis)

in at least three areas. Firstly, the form of exile in use in the Dominican Republic was certainly not permitted by the Covenant. There seemed also to be discrimination in favour of the State religion, and in that connection he asked how the Dominican Republic protected the right of parents and guardians to ensure the religious and moral education of children in accordance with their religious beliefs. With respect to the protection of minorities, he endorsed the questions raised by Ms. Higgins. He would also note, in connection with restrictions on trade union activities, that collective bargaining and the right to organize did not seem greatly respected in the Dominican Republic.

24. Mr. EL-SHAFEI, referring to article 7 of the Covenant, asked what measures existed to ensure that torture was not only prohibited by law but did not occur in practice. Referring to articles 9 and 10 of the Covenant, he noted that there had been reports of cases of death while in detention and asked whether the Government could refute those allegations. He also wished to have information on detention in institutions other than prisons, whether there were limitations on the repeated use of the time-limit of 48 hours for pre-trial detention, when solitary confinement was imposed and whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were known and accessible to prisoners. Noting that allegations had been made of beatings and torture under detention, he asked whether the delegation was in a position to refute those allegations.

25. Referring to article 13 of the Covenant, he asked for information on what crimes were subject to punishment by exile and whether exile was applicable to citizens as well as aliens. In connection with the legal remedies available to aliens described in paragraphs 69 to 74 of the report, he asked whether there were special courts for aliens in the Dominican Republic and, if so, whether the judgements of those courts could be appealed to the Supreme Court.

26. Referring to article 18 of the Covenant, he asked what practice was followed for recognizing religions and what religions were not allowed under Dominican law.

27. Mr. FRANCIS expressed disappointment at the information submitted with regard to a case of torture and the shooting by a member of the security forces of a person taking part in a peaceful protest, and asked what progress had been made in the investigation of the latter incident.

28. At a later time, he wished the Committee to take up the question of information which reached the Committee from unofficial sources.

29. Mrs. ABREU de POLANCO (Dominican Republic) assured the Committee that she was aware that its members served in their individual capacity and not as Government representatives.

30. There seemed to be some misunderstanding among members of the time-limit of 48 hours for pre-trial detention referred to in paragraph 57 of the third periodic report. That was the period within which evidence justifying the continued detention of an accused person must be submitted to a court. The figure of 70 per cent given in the next paragraph referred to persons for whom

(Mrs. Abreu de Polanco, Dominican Republic)

such evidence had been submitted who were being held pending trial, and the reason it was so high was because of the shortage of resources in the judiciary. As the report indicated, the Dominican Republic was making efforts to remedy that deficiency. There was no specific provision in Dominican legislation covering cases of torture while under detention. Anyone perpetrating an act of torture, whether or not the victim was under detention, was brought to justice and subjected to severe penalties.

31. Religious sects were banned only for insulting other religions. Such cases had occurred in the past; at present, however, as the United States State Department's report on human rights recognized, complete freedom existed for not only the Catholic but all religions in the Dominican Republic.

32. Replying to a question asked by Mr. Pocar at an earlier meeting, she said that there were regulations governing the use of firearms by the military, and those who violated them were brought before first a military and then a civilian court and severely punished.

33. As the United States State Department report noted, no citizen of the Dominican Republic had been exiled.

34. The Dominican Republic had adopted a new Labour Code in June 1992 which clearly established freedom of association. That new code was now being enforced, with the approval of ILO, which had warmly received the Dominican Republic's last report to it.

35. In reply to Mrs. Evatt's question concerning freedom of the press in connection with the suspension of radio broadcasts in Haitian Creole, she said that, while Dominican legislation required broadcasts to be in Spanish, that was not the reason for the suspension; rather, as the radio station in question had been broadcasting news and information to Haitians regarding the political upheaval in Haiti, it had been deemed to be intervening in that country's internal affairs.

36. With regard to the student who had been held without charges, she said that both the evidence found in his possession at the time of his arrest and the confession which he had signed while in police custody provided clear indications of his involvement in two bombing incidents in Santo Domingo. However, since there were two court orders for his release on grounds of insufficient evidence, he would, under normal circumstances, be released. In any case, investigations were continuing.

37. The practice of torture was not envisaged by Dominican legislation. While excesses were occasionally committed, those responsible were brought to justice, and the practice was tending to disappear as a result of constant vigilance.

38. In reply to Mr. Bruni Celli's question concerning the method of selecting judges, she said that, as noted in paragraphs 76 and 77 of the report, the Justice Commission was endeavouring to overcome the problems in that area; as a first step, the names of newly elected judges had been disseminated by the media

(Mrs. Abreu de Polanco,
Dominican Republic)

so that the public could have an opportunity to raise objections to the selection of a particular individual. The plan to establish a Judicial Council had received broad support, and all the political parties which were planning to run candidates in the forthcoming elections had promised to amend the Constitution.

39. In reply to Mr. Aguilar's question concerning discrimination against women, she said that women and men were equally free to seek and hold public office. If a Dominican woman married an alien, she had the option of retaining her nationality or adopting her husband's nationality.

40. She had no specific information concerning the situation of the professor referred to Mr. Pocar, but would ensure that the Committee was subsequently provided with all relevant documentation.

41. The concerns expressed by the members of the Committee would be taken into account in the process of amending the Constitution. Many provisions of Dominican legislation were outdated; for example, the Civil Code dated from 1882 and the Penal Code from 1884. A proposal had already been made to amend article 13 (f) of the Migration Act of 1939. Her Government requested the assistance and cooperation of the international community in bringing its legislation into line with the provisions of the Covenant, and hoped that, by the time its next periodic report was submitted, the existing deficiencies would have been remedied.

42. Mr. PICHARDO OLIVIER (Dominican Republic) said that the death penalty was no longer imposed in his country. If police killings occurred, the individuals responsible were tried before a police or a military tribunal and, if convicted, were subjected to civilian penalties. To the best of his knowledge, death squads did not operate in the Dominican Republic. There were, of course, serious deficiencies in the Dominican justice system because of the country's lack of resources, which made judges vulnerable to bribery attempts; the plan to create a Judicial Council was designed to solve such problems.

43. The function of the General Prison Directorate was to monitor the conduct of prison officials and prison conditions in general. Many prisons were, of course, badly underequipped. In some cases, minors had inadvertently been incarcerated with adults, but the errors had been discovered and corrected. Preventive detention did not exist; the authorities could detain a suspect for up to 48 hours, after which they must either charge or release him. As noted in paragraph 61 of the report, State prosecutors could appeal against writs of habeas corpus, but only in drug-trafficking cases.

44. Mrs. ABREU de POLANCO (Dominican Republic) said that non-governmental organizations enjoyed complete freedom of action in her country and were held in high esteem by her Government, which was grateful to them for organizing seminars on human rights.

45. Mr. PRADO VALLEJO said that he was still not fully satisfied with the information provided concerning the general status of the Covenant in the

(Mr. Prado Vallejo)

Dominican Republic; what was needed was not just official promulgation of the Covenant, but broad dissemination of its provisions by the Government. The country's legal system did not guarantee all the rights embodied in the Covenant: the police did not always respect the right to life, the practice of torture was uncontrolled, and the Government frequently did not investigate complaints, despite its obligation to do so. The expulsion of Haitian workers was unjustified and inhumane. Freedom of association was not guaranteed; trade unionists had been persecuted. The police did not obey court orders to release suspects; preventive detention extended well beyond the 48-hour period mandated by law. Freedom of religion was not guaranteed; minority religions were subject to discrimination. Lastly, prosecutors could appeal against writs of habeas corpus. The Government must make a basic effort to bring its domestic legislation into line with international human rights instruments.

46. Mr. FODOR said that he, too, was disappointed that the dialogue with the State party had not been more fruitful. With regard to section I (g) of the list of issues, while welcoming the indications provided by the State party of its willingness to cooperate more fully with the Committee in the future, he emphasized that, in respect of communication No. 193/1985, there was no need for the Committee to make further recommendations; rather, it was incumbent upon the State party to take all measures required to avoid a violation of the Covenant.

47. Discrimination against Haitian workers was continuing, although that had been an issue during the Committee's consideration of the State party's second periodic report. Concerns also persisted with regard to the excessive use of force by the police, including extrajudicial killings, torture and the ill-treatment of detainees; poor health and sanitary conditions in prisons; forced labour by Haitian workers, whose working conditions resembled slavery; the expulsion of aliens under 16 years of age and over 60 years of age; delays in the judicial process and the practice of employing children to do dangerous work.

48. Mr. MAVROMMATIS said that the pace of promotion of human rights and fundamental freedoms in the Dominican Republic had slowed considerably; 15 years after the State party's ratification of the Covenant, its status was still uncertain. There was a large body of legislation which was not in conformity with the provisions of the Covenant. The situation of Haitian workers remained a matter of pressing concern. It was disappointing that, by the time of its third periodic report, the State party had been unable to inform the Committee of any actions which it had taken to remedy the situation.

49. Miss CHANET said that she, too, was disappointed that so little progress had been made since the previous occasion on which the State party had come before the Committee. There appeared to be a misunderstanding on the part of the Dominican authorities as to their obligations under the Covenant and the nature of the reporting exercise; for example, it was in relation to article 8 of the Covenant, and not to labour conditions in general, that questions had been raised concerning the situation of Haitian workers. Furthermore, throughout the State party's report, the articles of the Covenant had been treated as though they were simply chapter headings; the text of the Covenant

(Miss Chanet)

had not been cited anywhere. The Committee had not been informed of how the Migration Act had been or would be amended to bring it into conformity with the Covenant. She continued to be troubled by the constraints imposed on Haitian workers and the issue of whether labour contracts were or were not concluded under duress. The Committee had been told that Presidential Decree No. 233-91 had been suspended only, not abrogated; it was to be feared that the Government could still make use of that legislation if it so wished. With regard to articles 7 and 9 of the Covenant, it was regrettable that persons held in custody were still subjected to ill-treatment, and that no information had been provided concerning the 27 persons who should have been released under a court order; in many cases, it appeared that such orders were routinely ignored.

50. Mr. WENNERGREN said that the answers provided by the delegation had not been those which the Committee had hoped to obtain, especially in view of the length of time in which it had been engaged in a dialogue with the State party. While information from various sources indicated that children no longer worked in the sugar-cane fields, the conditions affecting Haitian workers could only be defined as forced labour, which was incompatible with article 8 of the Covenant. Presidential Decree No. 233-91 was in flagrant violation of a number of rights embodied in the Covenant and should be totally abolished, not just suspended. It was to be hoped that the Government would, as it had promised, provide training in human rights to its police and military personnel.

51. Mrs. HIGGINS agreed with Mr. Prado Vallejo and said she shared the concerns expressed by Mr. Fodor. In addition, she believed that the State party's response to the Committee's questions regarding the banning of Creole-language broadcasts had been inadequate. In her view, the representative's response did not resolve the Committee's concerns regarding specific statements contained in the report. In particular, neither the report nor Mrs. Abreu de Polanco's response had addressed the issues of penalties for police and armed forces personnel found guilty of using torture, the use of preventive detention and summary deportations. On some questions both the report and the representative's responses had been candid, but in general she found them disappointing.

52. Mr. POCAR said the representative's responses had confirmed his concern that many questions about the report were destined to go unanswered. He wondered how consistent the rule of law actually was in the Dominican Republic. It was unclear to him, for example, how torturers were punished in the absence of specific penalties in Dominican law. In addition, the Dominican representative's statement regarding the use of military courts to try police and military personnel for firearms abuses had been unsatisfactory. In fact, the response appeared to suggest that the Dominican Republic had been systematically violating article 14 of the Covenant. He hoped that the Dominican Government's sincere desire to change the human rights situation in its country would result in more detailed and focused responses to the Committee's request for information.

53. Mrs. EVATT said she too had been disappointed with the State party's response. It was clear from other information available to the Committee that

(Mrs. Evatt)

existing Dominican laws were incompatible with Covenant provisions. In the absence of an independent judiciary, individuals would continue to be denied recourse when their rights were violated. The Dominican Republic needed to establish a truly independent agency for the investigation of complaints regarding human rights abuses. In addition, there was a pressing need for judges and members of the police and armed services to be instructed about the purposes and provisions of the Covenant. Moreover, citizens in general should be better informed about their rights under the Covenant, and there should be procedures for lodging formal complaints about abuses. She suggested that members' concerns could be included in the Committee's comments at the time of the State party's next periodic report.

54. Mr. BRUNI CELLI said that the human rights problems addressed by the Committee in its review of the State party's third periodic report remained serious. Despite the fact that the Dominican Republic had had three decades of civilian rule and had signed the Covenant as long ago as 1978, it had not yet amended its Constitution to bring it into line with the Covenant. He agreed that the concerns of Committee members should be transmitted to the Government of the Dominican Republic, in particular those recommendations regarding independence of judges and the need for greater awareness of Covenant provisions among judges, police personnel, the armed forces and prison employees.

55. Mr. AGUILAR said there appeared to be significant incompatibilities between existing Dominican laws and provisions of the Covenant. With respect to Haitian nationals in the Dominican Republic, he said that forced labour persisted and that other fundamental freedoms continued to be violated systematically. Moreover, the Dominican representative's responses appeared to conflict with statements made in the report. He agreed with the suggestion that the Committee's recommendations should be transmitted to the Dominican Government.

56. Mr. NDIAYE agreed with the comments of Mr. Fodor regarding the third periodic report. Not only had the report been incomplete, but even on the questions which it had addressed the Committee required additional information before it considered the fourth periodic report.

57. The CHAIRMAN summarized the concerns expressed by previous speakers and said that they concerned seven issues: the status of the Covenant in Dominican law; compliance with the Covenant provisions on forced labour; the use of summary expulsions; protection of the rights of detainees; firearms abuses by members of the military and the police; the illegal prohibition of Creole-language broadcasts; and the need for an independent judiciary.

58. Mrs. ABREU de POLANCO (Dominican Republic) said there had been some confusion about her response to the question regarding prison sentences imposed upon members of the military and police forces. She said sentences of 10 years had been imposed not for torture but for the illegal use of firearms. She also said that her Government would take note of the Committee's recommendations. Although the Dominican Republic had not been able to comply consistently with all the provisions of the Covenant, it had no intention of violating the Covenant in a systematic manner. The problem of Haitian nationals working in the Dominican Republic was of concern to her Government. A report by the United

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Dominican Republic)

States State Department noted that conditions in that regard had not deteriorated. Haitian nationals in the Dominican Republic did have documentation, but there had been a problem with workers remaining in the country after their work contracts had expired. It was not a simple matter to revise the Constitution or in the Civil and Penal Codes, but the Government was committed to doing so in the future.

59. The CHAIRMAN suggested the date of 31 March 1994 as a deadline for the submission by the Niger of its second periodic report to the Committee.

The meeting rose at 6.05 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1216
26 April 1993

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1216th MEETING

Held at Headquarters, New York,
on Monday, 29 March 1993, at 10 a.m.

Chairman: Mr. ANDO

later: Mr. WENNERGREN (Vice-Chairman)

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Uruguay

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Uruguay (CCPR/C/64/Add.4)

At the invitation of the Chairman, Mr. Jauregui (Uruguay) took a place at the Committee table.

Constitutional and legal framework within which the Covenant is implemented; state of emergency; non-discrimination, equality of the sexes and protection of family and children (arts. 2, 3, 4, 23, 24 and 26 of the Covenant) (sect. I of the list of issues)

1. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of Uruguay, namely: (a) any follow-up action taken as a result of views adopted by the Committee on communications under the Optional Protocol relating to Uruguay; (b) the Government's interpretation of the comments made by the Committee after consideration of the second periodic report regarding the compatibility of Act No. 15,848 of 1986 with articles 2 (3) and 9 (5) of the Covenant; (c) the adoption of any legal provisions, other than those which were in effect during the de facto regime, on the declaration and implementation of a state of emergency, the conformity of existing norms with article 4 of the Covenant, particularly paragraph 2, and an indication of the safeguards and effective remedies available to individuals during a state of emergency; (d) any instances in which Act No. 16,048 of 1989 had been applied since the submission of the current report; (e) details of any measurable progress stemming from the adoption of Act No. 16,045 of 1989 relating to non-discrimination based on sex; and (f) information on the law and practice relating to the employment of minors, and their protection in that respect.

2. Mr. JAUREGUI (Uruguay), referring to section I (a) of the list of issues, reviewed paragraphs 3, 4, 5, 11, 12 and 15 of the third periodic report, and pointed out that on 10 November 1992 his Government had ratified the 1988 Inter-American Convention to Prevent and Punish Torture, and that the Second Optional Protocol to the Covenant, on the abolition of the death penalty, would enter into force in Uruguay on 21 April 1993.

3. With reference to section I (b), the Statutory Limitations Act or Law of Expiry (Act No. 15,848 of 22 December 1986) establishing the application of statutory limitations to the punitive power of the State had been enacted, subsequent to the amnesty of 1985, at a very difficult period in his country's history following years of internal war. The Act was a fully legal action that did not suspend any of the provisions of the Covenant. Moreover, it undertook to provide compensation to the victims of human rights violations under the de facto regime and to guarantee that such abuses would not recur; in that respect it differed from statutes of limitations that had been adopted in other Latin American countries. Not only had the Act been adopted by an elected Parliament and declared constitutional by the Supreme Court of Uruguay - he would make available to the Committee a copy of the relevant judgement, Judgement No. 184 of 2 May 1988 - but it had also been democratically endorsed

(Mr. Jauregui, Uruguay)

by the people of the country in a referendum held in 1989 (paras. 118 to 120 of the report). The Act made provision for recourse to legal remedies and for claims of compensation for physical and moral damages sustained by individuals during the de facto regime. He made available to the Committee a report on the 34 judgements thus far handed down by the competent civil courts on compensation claims for involuntary or enforced disappearances and physical harassment during that period: four of those cases were still pending, one had been dropped by the plaintiff, three had been dismissed as unfounded, and in the remaining 26 cases, reparations ranging from $156,000 to approximately $17,000 had been awarded.

4. Referring to section I (c) of the list of issues, he said that it had not been necessary to adopt any new legislation regarding states of emergency because, with the end of the de facto regime, article 31 and section 17 of article 168 of the Constitution had come back into full force, and those provisions were completely adequate to safeguard the rights of individuals during a state of emergency.

5. With regard to section I (d), Act No. 16,048 of 16 June 1989, which penalized incitement to violation of the law, incitement to class or racial hatred, and the commission of racially motivated acts of violence (paras. 98 to 101 of the report), had not so far had to be applied. The Act had no doubt had a welcome preventive effect, reinforced also by Uruguay's democratic culture and the high level of general education in the country.

6. With regard to section I (e), article 8 of the Constitution established that all persons were equal before the law, but the adoption, on 16 June 1989, of Act No. 16,048, which specifically penalized acts of racial, ethnic or religious discrimination (para. 5 of the report), had added a further safeguard for the future of the country. He could categorically affirm that no such acts of discrimination had ever been committed in Uruguay, a country of immigrants which had achieved an amalgam of all races without any distinction between them.

7. As a direct consequence of article 8 of the Constitution, there was equality of opportunity for all in education, the holding of public office or service in the military. Articles 5, 29 and 37 of the Constitution, moreover, specifically guaranteed the freedoms of religion, thought and movement, respectively, and thus, in conjunction with article 8, made any formulation of discriminatory employment policies impossible in Uruguay.

8. He also referred to Act No. 16,051 of 10 July 1989, which had eliminated any possible discrimination against women by making both parents the legal administrators of the assets of their children. The Act of 18 September 1946 on the Civil Rights of Women, an exemplary law in its day that guaranteed equal employment rights for women, had been updated, in conformity with International Labour Organisation (ILO) Convention No. 111, by Act No. 16,045 of 2 June 1989 (para. 26 of the report), which specifically provided for equality of employment and opportunity for both sexes and prohibited discrimination with regard to salaries, as did all decrees setting salary levels.

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9. With reference to section I (f) of the list of issues, he said that minors under 15 years of age were not authorized to work. In some cases, exceptional authorization was granted to children aged 12 and over who were employed in businesses operated by their families. Authorization could be granted to minors aged 14 and over for agricultural work, but only with parental permission and medical clearance. Minors over 18 years of age were authorized to work six hours a day with a minimum of 12 hours between shifts and one full day of rest a week. The pay scale for minors and adults was identical. Individuals under 21 years of age required a co-signer when entering into a labour contract. Although he could not cite any specific cases, both the parents and the minors themselves could report violations of the regulations, which would then be verified by Government inspectors.

10. Mr. PRADO VALLEJO said that many positive changes had occurred in Uruguay since the examination of the second periodic report. The country had emerged from an era of violent military dictatorship and had returned to the path of democracy and respect for human rights.

11. Central to the understanding of the current situation in Uruguay was an understanding of the Statutory Limitations Act. That Act obviously reflected the sovereign will of the State not to impose punishment for abuses which had occurred during the former regime. Human rights did not depend solely on the will of a State or the signing of a treaty however; they were part of jus cogens, which a State must respect even if it had not signed the relevant covenants. Respect for human rights also created certain duties for States and Governments, first among which was the duty to investigate violations of human rights. He understood the desire for national reconciliation, but complaints of abuse of the most basic of rights, the right to life, and cases of disappearance, torture and maltreatment could not be ignored.

12. In practice, the Statutory Limitations Act, under which reports of human rights violations would not be investigated nor abuses punished, had created an atmosphere of impunity among elements of the police and the military. The only explanation for the continuing practice of torture and maltreatment in Uruguay, given the democratic Government and political structures, was that the Act gave the impression that no action would be taken against police officers who committed human rights abuses. Regrettably, other sources reported that investigations were not being conducted or that the police were not carrying out orders from the Government regarding investigations of current alleged abuses. The situation was all the more regrettable when contrasted with the many advances which had been made, in particular the adoption of an act granting the greatest degree of freedom of the press among Latin American countries.

13. With regard to section I (a) of the list of issues, he asked what action had been taken in response to the recommendations of the Committee regarding communications reviewed under the Optional Protocol, and whether the Statutory Limitations Act curtailed the ability to investigate such cases. Information on the measures taken in specific cases would demonstrate that the Government truly desired to put the Committee's recommendations into practice.

14. Mr. AGUILAR said he was pleased that Uruguay had restored democracy and respect for human rights. With regard to section I (a) of the list of issues, he would welcome further information regarding the effect of the Statutory Limitations Act on the exercise of the right of individuals to submit communications to the Committee under the Optional Protocol. In any case, the Act seemed to run counter to the provisions of the Optional Protocol. Examples had been given of several Latin American countries which had adopted similar laws, El Salvador being the most recent. The cases did not seem comparable, however, since no popular referendum had been held in El Salvador, as it had in Uruguay. In the case of El Salvador, the independent Commission on the Truth had conducted investigations and issued a report on its findings. The immediate passage of an Amnesty Act by the Government of El Salvador contributed to a serious problem found in all parts of Latin America: such actions created the impression among the military and the police that they could act with impunity. Although human rights abuses and torture were continuing in the police stations and prisons of Uruguay, recent efforts to monitor police activities were a hopeful sign.

15. During the consideration of the second periodic report of Uruguay, it had been stated that the Statutory Limitations Act would not affect the rights of victims of human rights abuses to receive monetary reparations from the State. In many cases, however, the only appropriate compensation was the "moral reparation" of learning the truth, yet, under the Act, such cases were not only not brought to trial, but were not even investigated. At that time, the delegation of Uruguay had also said that it was awaiting the decisions of the Inter-American Commission on Human Rights on a number of cases. The Commission had subsequently decided that the Statutory Limitations Act was incompatible with the Pact of San José and the Government had then taken the position that the Commission had no authority to rule in such cases.

16. Referring to paragraph 116 of the report, he requested clarification of the meaning of the act of taking up residence. He would also welcome further information regarding the operation of the Honorary National Commission for Disabled Persons, as mentioned in paragraph 134.

17. Mr. Wennergren (Vice-Chairman) took the Chair.

18. Miss CHANET said that Uruguay had taken into account the comments made by the Committee during its consideration of that country's second periodic report. Although some progress had been made over the previous three years, too little time had elapsed for an entirely satisfactory position to have been attained in the area of human rights protection.

19. The Committee remained concerned about the effects of the Statutory Limitations Act, which had been presented as not inconsistent with the provisions of the Covenant. Noting, however, that the Covenant did not place any time-limit on cases of torture and disappearance, she drew attention to the views expressed in paragraph 15 of the Committee's general comment on article 7 of the Convention, in which it concluded that amnesties were generally incompatible with the duty of States to investigate acts of torture (HRI/GEN/1). An amnesty could not prevent inquiries and the granting of compensation; yet it appeared from information before the Committee that the Statutory Limitations Act had seriously impeded the conduct of inquiries. When an individual was

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unable to seek redress through normal legal channels and when his efforts to obtain such redress were obstructed by the State itself, his ability to obtain compensation was clearly severely limited.

20. She sought clarification on the provisions of article 31 and section 17 of article 168, of the 1986 Constitution, on the state of emergency: in particular, she would like to know whether only the freedom of movement was limited, whether detention and house arrest were provided for, and whether there were any derogations from the provisions of article 9 of the Covenant.

21. Referring to paragraph 28 of the report, she requested clarification of the "reverse discrimination" and wondered whether it was consistent with the provisions of the Covenant as interpreted by the Committee in its general comments. In addition, she asked for details of any cases that had come before the industrial tribunals referred to in the report, involving discrimination against women.

22. She wondered what measures had been taken to address the problem of the employment of children below the minimum age, which had been variously given as 14 and 15 years and to ensure that children who were employed in agricultural work were not prevented from attending school.

23. Mr. FODOR, referring to the implication in paragraph 2 of the report that the Committee had somehow been responsible for the inadequate time that had elapsed between the two periodic reports, said that the initial delay had been caused by the State party, which had submitted both its initial report and its second periodic report five years late. Furthermore, in certain States parties, many events involving implementation of the Covenant could take place within a space of two years.

24. The report contained adequate information on new legislation and demonstrated that there had been many important developments in Uruguay over that short period. More information, however, was needed on the practical implementation of that legislation and on the difficulties experienced by the State party, in particular, in its judicial practice.

25. The State party had responded in rather general terms to the request for information on follow-up action, contained in section I (a) of the list of issues, but the Committee had adopted some 40 views on communications from Uruguay between 1979 and 1988 and it would be useful to know what specific follow-up there had been to those views. In particular, he sought information on the question of compensation. Referring to a case which had been brought to the Committee's attention by the State party in a note verbale dated 8 May 1991, in which the author had not taken legal proceedings for compensation, he wondered whether in Uruguay there was any institution or agency empowered to award compensation ex officio, in cases involving unlawful detention and miscarriages of justice, or whether judicial proceedings were a precondition for obtaining compensation.

26. With reference to the issue of discrimination, information from other sources indicated the existence of discrimination against the black minority in

(Mr. Fodor)

Uruguay. He wondered whether such discrimination had been brought to the attention of the authorities and noted that, once an allegation had been made, it was the obligation of the State party to ascertain the relevant facts.

27. Mr. EL-SHAFEI said that there had been encouraging developments in the area of human rights legislation since the election of the new Government in 1990. In particular, he welcomed that country's recognition of the competence of the International Fact-Finding Commission established under article 19 of the Protocol to the Geneva Convention of 1949. Uruguay was one of the very few countries to have recognized the competence of the Commission to deal with human rights issues and to have acceded to the Optional Protocol to the Covenant.

28. He was, however, disappointed by the report's silence on developments relating to a number of articles of the Covenant, in particular, articles 7, 17 and 18. He also shared the regret of other members that the State party had not responded to the views adopted by the Committee, and agreed on the need for information on any follow-up in that area.

29. He also associated himself with the views expressed by previous speakers concerning the Statutory Limitations Act. While he understood the reasons for its adoption, he hoped that the State party was fully aware of its consequences. The Committee knew of 30 cases in which offenders had been penalized and compensation had been paid to victims, but he wondered what redress other complainants had received and what procedures had been affected negatively by the enactment of that legislation. In particular, he wondered whether a compromise solution had been reached outside the judicial process and whether all complaints about violations under the military regime had been satisfactorily settled. In conclusion, he said he was encouraged by the new spirit of dialogue with the State party and hoped that it would be maintained.

30. Mrs. HIGGINS said that she, too, was encouraged by the attention given by the State party to the Committee's earlier comments. That notwithstanding, further elaboration was required in some areas. The report contained no information relating to articles 2, 3, 4, 12, 13, 18, 21 and 27 of the Covenant, which covered a disturbingly large number of rights. Some of those rights had been dealt with in a cursory manner in the State party's previous periodic report and she wondered, therefore, whether Uruguay was following the guidelines for the third periodic report and addressing only new matters and possible problem areas. Even so, certain problem areas which were outstanding from the previous periodic report should still have been addressed, and articles 3, 13, 21 and 27 had not been broached at all in the previous reports.

31. Particularly disturbing was the lack of information on article 7, especially in the light of the adoption of the Statutory Limitations Act. While arrangements still provided for reparation to victims and assurances had been given that there would be no repetition of such violations, the absence of any information on appropriate measures and the removal of the punishment mechanism left the Committee uncertain as to the reliability of such assurances. She sought clarification on whether the decision not to prosecute still left all possibilities open for the collection of information, so that compensation would be available to everyone.

(Mrs. Higgins)

32. With reference to article 4 of the Covenant, mentioned in section I (c) of the list of issues, the State party had informed the Committee that no new measures were required as the situation had returned to normal. When the Committee had discussed article 168, section 17, of the 1971 Constitution, however, it had noted that the provisions of that article were not identical with those under article 4 of the Covenant on the conditions of derogation. Even though the text of article 168 of the 1986 Constitution set out detailed provisions, some concern remained about the conditions under which it allowed derogation, which were much broader and looser than those allowed under article 4, paragraph 1, of the Covenant. In addition, the Constitution did not say anywhere that rights which, under the Covenant, could not be derogated from could not be limited. In the light of that interpretation, she wondered why no new measures were needed.

33. Mr. BRUNI CELLI said that Uruguay's Statute of Limitations Act could be included in what were called amnesty laws, all of which did not have the same basis. In some cases, authoritarian military governments had granted themselves amnesty before handing over power to democratically elected civilian authorities, while in others agreement had been reached between civilian and military regimes before the handing over of power and in still others the civilian governments themselves had promulgated laws in the name of national reconciliation. The representative of Uruguay had indicated that the latter case applied to his country's Statute of Limitations Act. Unfortunately, in recent years the promulgation of legislation leading to pardon had become widespread in Latin America and those responsible for human rights violations had been let off without trial, prosecution or punishment, even though many of the crimes were very grave violations of human rights, in the category of crimes against mankind, such as cases of forced disappearance.

34. At the time the second report had been considered, the Government of Uruguay had said that it was awaiting the decision of the Inter-American Commission on Human Rights. The important issue under consideration was whether the Statute of Limitations Act was compatible with the commitment entered into by the State of Uruguay in trying to ratify a treaty. The Inter-American Commission on Human Rights had noted that the Statute of Limitations Act was not compatible with the obligations of the State of Uruguay in ratifying the American Convention on Human Rights. As the articles of that Convention and the articles of the Covenant on the matter were virtually the same, he hoped that the representative of Uruguay would be able to explain why there was nothing in the report concerning the Statute of Limitations Act.

35. Under article 2 (1) of the Covenant, States parties were under an obligation to recognize human rights and, where their internal legislation did not provide for such recognition, they were required to enact the necessary legislation to give effect to those rights and freedoms. If a State party had an internal law that contradicted or detracted from those rights, that State had an obligation to repeal it, regardless of the fact that the law might have been promulgated in accordance with the constitutional procedures in force. Under the Vienna Convention on the Law of Treaties, a State could not invoke the provisions of an internal law to justify non-compliance with a treaty which it had voluntarily ratified.

(Mr. Bruni Celli)

36. He wished to know what the Uruguayan Government's opinion was regarding the capacity of the Committee to take a stand on the compatibility of national legislation with the terms of the International Covenant on Civil and Political Rights.

37. Mrs. EVATT commended the Government of Uruguay on the extensive action it had taken since the previous report to fulfil its obligations under the various international covenants, in particular on its organization of seminars for law enforcement officers to discuss problems of ensuring compliance with human rights standards. She wondered whether that seminar would be followed by regular training sessions not only for law enforcement officers but also for medical personnel who often had the first contact with such violations of human rights.

38. Like other members of the Committee, she was concerned about the compatibility of the Statute of Limitations Act with the Government's obligations under the Covenant. That Act could not relieve the Government of its obligation to provide remedies in accordance with article 2 (3) of the Covenant. Unless investigations of some kind were carried out, it would be impossible to provide such remedies and public confidence in the system would be continually undermined.

39. It would be useful if the representative of Uruguay could inform the Committee as to whether a human rights commission had been established in his country and, if so, whether it was an independent body which could receive and investigate complaints relating to human rights violations and how it could assist people in pursuing the remedies to which they were entitled under article 2 (3) of the Covenant.

40. Mr. SADI commended Uruguay on its successful transition from an era of oppression to one of democracy. His only concern was with regard to the Statutes of Limitations Act. The fact that articles 6 and 7 of the Covenant could not be derogated from even in a state of emergency, was sufficient reason for Uruguay not to derogate from its obligations under those articles in peacetime. In order to give credence to its obligations under articles 6 and 7, protect its people from any violations and prevent a return to the era of oppression, the Government must investigate and prosecute people who had committed crimes under those articles. The customary international law on crimes against humanity was that they were not subject to a statute of limitations. He hoped that the representative of Uruguay would inform his Government of the consensus in the Committee that the Statute of Limitations Act ran counter to the spirit and letter of the Covenant.

41. Mr. MAVROMMATIS said that the report would have been much better had it taken into account the Committee's serious concerns about the Amnesty Act and the communications. There might be cases where a Government, faced with the dilemma of a country emerging from a dictatorship, might, in its desire to preserve the peace and security of the country, opt for amnesty. That should not prevent investigations to learn the truth nor the institution of proceedings to obtain a remedy in the form of compensation or restitution. The question of the Amnesty Act was closely connected with that of the replies to the views of

(Mr. Mavrommatis)

the Committee on the communications. Although he appreciated the information which had been provided on the decisions of Uruguayan courts in respect of over 30 cases, detailed information should have been given in response to each view of the Committee. He hoped that when the concerns expressed by the Committee was transmitted once again to the Government of Uruguay, fuller information would be provided on the measures actually taken.

42. Uruguay's replies on non-discrimination, in general, and on discrimination in respect of sex and of minors, in particular, were very general. The country was facing difficulties because of a number of factors such as poverty, the quality and quantity of education, and prejudice. That was why the Committee had asked for details of the progress made with respect to discrimination, particularly against minors. It was the duty of the Government to ensure the applicability of legislation through inspections and other deterrents or preventive measures.

43. Mr. LALLAH said that, although he found the report extremely helpful, he felt that it could have been much better. In that regard, he referred to paragraph 59 of summary record CCPR/C/SR.879 in which it was stated that Uruguay had been given a list of cases examined under the Optional Protocol. He had expected that the Government of Uruguay would have paid attention to that list and provided very full answers.

44. Referring to paragraph 26 of the report, he inquired whether Act No. 16,045 applied to the Government as well and not simply to employment in other sectors. The statement in paragraph 27 of the report "job security (especially with regard to supervision and dismissal, with particular emphasis on cases involving changes in civil status ...)" was not clear. He would also like to know what precise and practical situations were envisaged by the phrase "reverse discrimination" in paragraph 28.

45. Mr. DIMITRIJEVIĆ said that unfortunately some of the most important matters that should have been dealt with in the report had been dealt with in the oral explanations. The reason why the Committee was concentrating on the Statutory Limitations Act was that Uruguay was only one of several countries emerging from a totalitarian past into a democratic present. It was a legal problem which the Committee was trying to approach from the angle of prevention. Recently, the Committee and other similar bodies had realized that it was not enough to determine after the fact that violations had been committed, without examining and identifying potential future dangers. That explained the Committee's insistence on dealing with what article 40 of the Covenant termed "factors and difficulties".

46. He wished to know what appropriate measures Uruguay envisaged taking in order to avoid a recurrence of the recent experiences. In that connection, he agreed that some information was lacking in respect of certain articles, for instance, articles 4, 7 and 2.

47. It should perhaps be pointed out that when the Committee dealt with individual cases in connection with the Statutory Limitations Act and impunity under the Optional Protocol, its approach was different from its approach to

(Mr. Dimitrijević)

individual complaints. In considering the report, the Committee looked not only at the obligation of the Government to take action to fulfil its international obligations but also tried to ensure that the just application of criminal law served a preventive function. The Committee would be very interested to hear about the public debate in Uruguay on the application of criminal law with a view to preventing the recurrence of similar offences. Specifically, it would like a better explanation as to how civil claims were lodged and how facts were established in the absence of criminal procedures.

48. More information would also be appreciated as to how past occurrences were being addressed, what was being done to provide equal employment opportunities for all and how affirmative action was being implemented, particularly in respect of women, minorities and religious groups.

49. Mr. POCAR asked for further details as to how the Statute of Limitations Act was applied in practice. The fact that an Amnesty Act had been promulgated should not prevent victims from asking for compensation, and should therefore not prevent investigations of violations with a view to providing compensation. As far as he could recall, the law did not cover crimes committed for other than political reasons. In certain cases, it was up to the Government to decide whether or not the political reasons existed. He wondered who decided whether a specific situation was covered by the law and whether the 34 cases mentioned earlier were or were not covered by the law.

The meeting rose at 1.05 p.m.